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Supreme Court, U.S.
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JOINT APPENDIX

United States Court of Appeals
For the District of Columbia Circuit

No. 12,717

J. STANLEY BAUGHMAN, ET AL., *Appellants*

v.

A. LINCOLN GREEN, *Appellee*

Appeal from the United States District Court for the District of Columbia

United States Court of Appeals
For the
District of Columbia Circuit
FILED JUN 28 1955
CLERK

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United States Court of Appeals
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v.

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Appeal from the United States District Court for the District of Columbia

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JOINT APPENDIX

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71 (Filed Aug. 12, 1954)

Harry M. Hull, Clerk

Complaint for Illegal Discharge From Government Employ and for a Declaratory Judgment

1. This Court has jurisdiction under Sections 1331 and 1332, Title 28, USCA and Section 301 and 306, District of Columbia Code, 1951 Edition. Plaintiff is a citizen of the State of New York and of the United States. Defendant, J. Stanley Baughman, is the President of the Federal National Mortgage Association, a corporate instrumentality of the United States; defendants, Philip Young, George N.

Moore, and Frederick J. Lawton, are all the members of the United States Civil Service Commission.

2. Plaintiff is a permanent preference eligible with competitive status and a veteran of both world wars, disabled in line of duty. He is an attorney-at-law. At the time of his dismissal, he was in the grade of GS-13, earning $9,160 per year and had had fourteen years of service with the government.

3. On July 14, 1952 plaintiff was served with a statement of charges, signed by the defendant, Baughman.

4. On September 19, 1952, a decision, signed by the defendant, Baughman, was rendered, holding that the charges were sustained and dismissing plaintiff.

72 5. Upon appeal, the Chief Law Officer of the Civil Service Commission affirmed the decision. Upon further appeal the Board of Appeals and Review of the Commission held that Charges 4 and 5 were defective, lacking specificity, but that Charges 1(a), 1(b), 2 and 3 were valid and affirmed the decision of dismissal.

6. Plaintiff has exhausted his administrative remedy.

7. The foregoing allegations are made part of and incorporated in each of the following counts as if repeated and re-alleged therein in full.

FIRST COUNT

9. Each and every one of the charges fails to set forth the date of the commission of an offense and fails to state a specific instance of misconduct, in violation of section 14 of the Veterans' Preference Act of 1944 and the regulations of the Civil Service Commission, requiring that charges and reasons be stated specifically and in detail.

10. The charges are blanket accusations, charging an indefinite and unascertainable number of acts of misconduct by means of a single word or phrase, "numerous," "frequently," "during the period," "at various times," "at times," "on various occasions."

11. The charges are ambiguous, vague and indefinite. It is impossible to ascertain the elements of the offense or the standard necessary for its commission.

12. The charges allege conclusions and characterizations.

13. The charges have no defined scope or meaning.

14. The actions implied or alluded to in the charges are not offenses.

15. Plaintiff on or about July 23, 1952, delivered a letter to the defendant, Baughman, setting forth the defects in the charges and requesting that a new statement of charges be served upon him. Plaintiff's request was denied.

SECOND COUNT

16. In violation of the provisions of sec. 14 of the Veterans' Preference Act and of the regulations of the Civil Service Commission, the decision of dismissal states
73 no reason for the dismissal.

THIRD COUNT

17. The Board of Appeals and Review committed error in affirming the decision of dismissal. As it found that Charges 4 and 5 were defective, there had not therefore been substantial compliance with section 14 of the Veterans' Preference Act requiring that any and all reasons for dismissal be stated "specifically and in detail."

FOURTH COUNT

18. The decision of dismissal, signed by the defendant, Baughman, was not in fact made by him but was made by a person who was not an administrative officer of the Federal National Mortgage Association, who had no obligation to consider the evidence and who did not in fact consider the evidence.

FIFTH COUNT
WITH RESPECT TO CHARGES 2 AND 3

19. The commission of the acts referred to in Charges 2 and 3 for a period of twenty months within the scope of

observation and supervision of plaintiff's superior charges plaintiff's superior and the defendant, Baughman, with knowledge and establishes a matter of law that the acts referred to were done with permission and with innocent intent by the plaintiff.

SIXTH COUNT

20. Plaintiff gave to the Chief Law Officer of the Commission the name of certain employees of the government who had made adverse statements and affidavits and asked the Chief Law Officer to request their presence at the hearing so that plaintiff might interrogate them on their statements and affidavits. The Chief Law Officer refused to do this upon the ground that he did not have the power of subpoena but permitted the employees to be told that they could appear or stay away from the hearing as they wished.

The Commission considered these statements and
74 affidavits adverse to the plaintiff, but refused to give to plaintiff the assistance in its power so that plaintiff might show contradictions and falsity in the affidavits and statements, considered by the commission.

SEVENTH COUNT

21. On or about July 23, 1952 plaintiff served upon the defendant Baughman a letter, with verification attesting to the truth of the matters therein set forth, requesting that said defendant disqualify himself from judging the charges. The matters set forth in said letter showed that said Baughman had indicated that plaintiff was guilty of the charges, that he had requested plaintiff to resign to avoid trial on the charges, that he had criticised plaintiff for considering matters from the legal point and had stated that plaintiff kept to his room, indicating that plaintiff was not sociable enough. By reason of the matters set forth in said letter and plaintiff's answering affidavit, defendant Baughman was disqualified for bias, interest and prejudice from making the decision.

EIGHTH COUNT

22. The decision of dismissal is capricious, arbitrary and unreasonable. The adverse statements and affidavits are composed largely of hearsay and opinion. In no case is a date stated or the details of a specific instance.

The decisions ignored entirely the direct, positive statement in the affidavit of the secretary that plaintiff did not use abusive language to her. The decisions ignored the direct, positive statement of plaintiff's immediate superior, that the personal work performed by the stenographer was known to him and was not extensive.

NINTH COUNT

23. Defendant, Baughman, in signing the charges and assuming to judge them, acted in bad faith. He instigated an investigation into the conduct of plaintiff for a
75 period of twenty months prior to the date of the charges although no complaints had ever been made of plaintiff's conduct and plaintiff had never been warned that his conduct was contrary to regulations or constituted grounds for charges. It was customary for employees to make personal telephone calls and to ask the stenographer for an occasional personal favor and the defendant, Baughman, knew it. The charges were made pursuant to a pre-conceived design to separate plaintiff from his job with the agency. Prior to the delivery of the charges plaintiff was requested by general counsel in the presence of the defendant, Baughman, to obtain a job with another agency and was asked whether he had any interviews scheduled. When plaintiff stated that he had no interviews scheduled, defendant Baughman then said that charges would be considered. When plaintiff asked how he could obtain another position when charges were contemplated, general counsel in his presence said that that could be arranged.

Plaintiff had incurred the displeasure and dislike of the defendant, Baughman, and general counsel by refusing to write an opinion justifying a settlement for a larger sum

than the government owed. Plaintiff had shown reluctance in writing opinions contrary to opinions he had first written, although no error in his original legal opinions were pointed out. Plaintiff had made suggestions, when called upon, to obviate delays in answering letters from the public and from the field. He had from time to time asked for more work. When defendant, Baughman, offered him a position on the administrative side, saying that plaintiff was not very busy, plaintiff had been obliged to point out that the reason that he was not very busy was that an attorney had been taken on at a time when he and the other attorneys were not very busy.

TENTH COUNT

24. The affidavits and statements obtained from the plaintiff's former secretaries were obtained by means of coercion and undue influence. Said secretaries had stated
that they did not wish to sign statements and affi-
76 davits. In one case the secretary refused to sign
a statement in support of the charges. Thereafter persuasion and pressure was used. Said pressure and persuasion was in fact coercion, being exerted by defendant, Baughman who was the President of Federal National Mortgage Association through his investigator upon employees under his supervision, who were or believed they were dependent on his favor for their positions and for promotion.

WHEREFORE, plaintiff prays for a declaratory judgment declaring that plaintiff's dismissal was illegal and in violation of the Veterans' Preference Act of 1944 and the regulations of the Civil Service Commission and for an order directing the defendants to restore the plaintiff to his position as of the date of his discharge; that plaintiff have such other and further relief as may appear just and equitable.

77 (Filed Sept. 24, 1954)

Harry M. Hull, *Clerk*

Motion for Summary Judgment

Come now the defendants herein by the United States Attorney for the District of Columbia and move that judgment be entered in their favor and state as grounds therefor, that there is no genuine issue of fact and that defendants are entitled to judgment as a matter of law.

* * * * * * * * * * *

79 (Filed Nov. 22, 1954)

Harry M. Hull, *Clerk*

Motion for Summary Judgment

Comes now the plaintiff and moves the court that it enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, a summary judgment in plaintiff's favor for the relief demanded in the complaint on the ground that there is no genuine issue as to any material fact and that plaintiff is entitled to a judgment as a matter of law.

This motion is based upon:

a. The complaint,

b. Statement of charges, dated July 14, 1952.

c. Letter from A. Lincoln Green to J. Stanley Baughman, dated July 23, 1952.

d. Letter from J. Stanley Baughman to A. Lincoln Green, dated July 29, 1952.

e. Answering Affidavit of A. Lincoln Green, sworn to Sept. 9, 1952.

f. Letter notice of discharge, dated Sept. 19, 1952.

g. Notice of Appeal to Civil Service Commission dated Sept. 29, 1952,

h. Letter from A. Lincoln Green to L. V. Meloy, Chief Law Officer, U.S. Civil Service Commission, dated Dec. 19, 1952.

i. Letter from A. Lincoln Green to L. V. Meloy, dated Jan. 26, 1953.

j. Decision of L. V. Meloy, Chief Law Officer of the Civil Service Commission.

k. Transcript of Proceedings at Hearing in Civil Service Commission, dated March 4, 1953.

l. Letter to L. V. Meloy, dated May 8, 1953.

m. Letter of Appeal to Board of Appeals and Review, dated June 12, 1953.

n. Letter to John E. Blann, Chairman Board of Appeals and Review, dated November 29, 1953.

80 o. Transcript of Proceedings on Motion for summary judgment in Civil Actions No. 6268-52 and 139-53.

p. Decision of Board of Appeals and Review, dated February 3, 1954.

q. Letter to John E. Blann, Chairman Board of Appeals and Review, dated February 13, 1954.

r. Letter to John E. Blann, dated March 16, 1954.

s. Letter from A. Lincoln Green to John E. Blann, dated July 22, 1954.

t. Letter from John E. Blann, dated July 29, 1954.

u. Statements and affidavits of Elaine Chan, Elaine Shirrell Rosenthal, Milton Gordon, Edward S. Wendell, Robert Newton Reid, Allaine Tyler, James R. Coolidge, J. Arthur Wood, Thomas Wilson, Harry M. Gilbert, Louis H. Quniter, J. Stanley Baughman, Philip J. Sadoti, Edith A. Smith, Mary L. Smith, Tyler B. Green. Memorandum of September 15, 1952 from J. S. Baughman to Raymond M. Foley.

* * * * * * * * * *

81 (Filed Dec. 21, 1954)

Harry M. Hull, *Clerk*

Memorandum Opinion

Plaintiff was employed as an attorney by the Federal National Mortgage Association, hereinafter referred to as the Association, and had civil service status as a veteran. On September 19, 1952, he was discharged under Section 14 of the Veterans Preference Act of 1944 as amended, Title 5, U.S.C. Section 863, on the basis of the reasons given to him in writing by J. Stanley Baughman, President of the Association in a communication addressed to Plaintiff under date of July 14, 1952, captioned "Statement of Charges". The reasons given in writing for Plaintiff's discharge consisted of five charges, the first three of which embraced sub designated paragraphs. The Association was a corporation wholly owned by the Federal government and came within the terms and provisions of the aforementioned Title and Section of the United States Code.

Following his discharge and prior to the filing of the complaint in the instant suit Plaintiff instituted two actions in the District Court of the United States for the District of Columbia, being respectively C.A.139-53 captioned Green v. Perkins, as Acting Chairman of the United States Civil Service Commission, and C.A.3410-54, captioned Green v. Baughman, as President of the

82 Association, and Young, Moore & Lawton, members of the United States Civil Service Commission. In the former of these two actions Plaintiff sought a temporary restraining order which was denied. In the latter Plaintiff sought a declaratory judgment that his dismissal was illegal and in violation of the Veterans Preference Act of 1944 and regulations of the Civil Service Commission and an order directing the Defendants to restore him to his position as of the date of his discharge, and further relief as might appear just and equitable.

Defendant moved to consolidate the two previous actions and consent to consolidation was entered by Plaintiff.

Defendant moved to dismiss and asked that the complaints be considered together, and they appear to have been so considered.

On the hearing of the Motion to Dismiss the Court stated, in passing on the motion:

> "While the Court is of the opinion that some of the charges presented against the plaintiff are insufficient under the authority of Deak v. Pace, 88 Appeals D.C. 50, nevertheless, at least one of them gives sufficient detail, and that is the charge contained in 1(a).
>
> That charge refers to a specific episode which is identified by the facts and by the assertion that the plaintiff was warned that such conduct must not be repeated and that he stated there would be no repetition.
>
> Most of the other charges, if not all, are insufficient under the rule of the Deak case. It is quite obvious that the person who framed the charges was not familiar with that case; and I think that the rule of that case should be brought to the attention of all administrative officials who deal with charges against personnel.
>
> In view of the fact that one good charge is enough to justify severance from the service, it is sufficient to warrant a dismissal of the first count of the amended complaint."

Appeal was taken and the United States Court of Appeals, District of Columbia Circuit in Green v. Baughman and Green v. Young, 234 F. 2d 878, affirmed the
83 decision of the lower court on the ground that Plaintiff had not exhausted his administrative remedies.

Thereafter Plaintiff continued to pursue his administrative remedies and exhausted them with the result that the Board of Appeals and Review of the Civil Service Commission, through John E. Blann, Chairman, by letter

dated February 3, 1954 addressed to Plaintiff notified Plaintiff as follows:

> "* * * decision has been reached that Charges 1(a), 1(b), 2 and 3, as set forth in The notice of proposed adverse action" (i.e. the Statement of Charges) "are procedurally valid and that the removal action was justified and was for such cause as will promote the efficiency of the Service within the meaning of Section 14 of the Veterans' Preference Act of 1944, as amended, on the basis of these charges. It was further determined that Charges 4 and 5 are defective due to lack of specificity required by Section 14 and the Commission's Regulations."

On August 12, 1954, Plaintiff filed the present action praying for declaratory judgment declaring that his dismissal was illegal and in violation of the Veterans' Preference Act of 1944 and the regulations of the Civil Service Commission and for an order directing the Defendants to restore him to his position as of the date of his discharge and for such other and further relief as may appear just and equitable.

In passing on the instant motions of Plaintiff and Defendant, respectively, for summary judgment this Court is directing its attention to the question as to whether the charges complied with the procedural requirements of the Veterans Preference Statute. Section 14 of said statute, Title 5, U.S.C. Section 868, supra, provides, so far as pertinent here, as follows:

> "No * preference eligible, * * shall be discharged * * except for such causes as will promote the efficiency of the Service and for reasons given in writing * * * * stating any and all reasons specifically and in detail, for any such proposed action."

84 Of the four grounds stated to Plaintiff in writing by his superior for his dismissal, the Court, in passing on the motion to dismiss above referred to, involving said grounds (other than I(a) hereinafter discussed), stated with respect to said grounds:

> "Most, * *, if not all, are insufficient under the Deak case." (*Deak v. Pace*, 88 U.S. App. D.C. 50)

Although the same charges were involved in the ruling of the Court on said motion to dismiss as are involved herein, this statement of the Court, appraising charges as to whether they comply with the requirements of the Statute, was made in a case other than the instant case, and is not, in the Court's opinion, to be regarded as the law of the case. However, this Court feels it is entitled to consideration in determining whether statutory requirements have been complied with. Chairman Blann of the Civil Service Board of Appeals and Review, in his letter above mentioned, addressed to Plaintiff on February 3, 1954 announced the decision that Charges 4 and 5 were defective and Charges 1(a) and 1(b), 2 and 3 were procedurally valid. Thus all charges with the exception of Charge I(a) previously have been found to be either definitely defective or to be suspect as to validity for lack of compliance with the statutory requirements. In the instant case this Court has considered all the contents of the "Statement of Charges" of July 14, 1952 for the purpose of determining whether or not they meet the test of compliance with statutory requirements. Upon consideration of Charges Ib, II, III and IV this Court concludes that they are invalid for lack of specificity. Charge I(a), as this Court interprets it, while designated as a charge, constitutes, in reality, not a charge, or, in other words a statement of "reasons specifically and in detail, for any such proposed action" (i.e. discharge) as required by the Statute,

85 but constitutes, rather, an outlining of the circumstances under which it is stated a warning was issued to Plaintiff that certain conduct would not be tolerated and

must not be repeated and as a result of which Plaintiff stated there would be no repetition of such conduct. It appears to be preliminary to I(b), the next numbered charge. The three or four month period which I(a) embraces—the period from November 1950 to February 1951—antedates the filing of the Statement of Charges from 17 or 18 months to 21 or 22 months. The following paragraph in the Statement of Charges, being I(b), to which, as stated, I(a) appears to be the preliminary or the introduction, embraces a period beginning in February 1951 and ending in June 1952, one month prior to the filing of the charges. The fact that I(a) contains a statement that Plaintiff stated that there would be no repetition of such conduct does not, in the Court's opinion, change its nature and character. In addition, Charge I(a) is couched in words and phrases which, in this Court's opinion, seem to constitute, in the main, characterizations and conclusions rather than reasons stated specifically and in detail as required by the Statute.

With due respect to the appraisal of I(a) made by the Court in ruling on the motion to dismiss in a previous case, above referred to, this Court concludes that I(a) lacks specificity and fails to conform to the procedural requirements laid down in the Statute and finds, consequently, that it is invalid.

The Court having concluded that all the charges filed against Plaintiff lack validity for the reasons, respectively, herein above stated, the Motion for Summary Judgment of the Defendant is hereby overruled and the Motion for Summary Judgment of the Plaintiff is hereby sustained.

CHARLES F. McLAUGHLIN,
Judge

December 21, 1954

86 (Filed Jan. 3, 1955)

Harry M. Hull, *Clerk*

Judgment

This cause having come on for hearing on the defendants' motion for summary judgment and plaintiff's cross-motion for summary judgment and the Court having considered the pleadings, affidavits, exhibits and memoranda in support and in opposition to the respective motions, and being fully advised in the premises this 3rd day of January, 1955, it is

ORDERED, ADJUDGED AND DECREED:

1. That the defendants' motion for summary judgment be and the same is hereby overruled.

2. That plaintiff's motion for summary judgment be and the same is hereby granted.

3. That the defendants and each of them is hereby ordered and directed to restore the plaintiff, A. Lincoln Green, to the position he held on September 19, 1952 before his wrongful and illegal discharge and the said defendants and each of them is ordered and directed to restore to plaintiff the benefits, rights, emoluments and privileges flowing from a continuity of service from the date of his wrongful discharge to the date of his restoration to his position, as if said illegal discharge had not taken place.

4. That the defendants and each of them is ordered and directed to correct the records in their custody to
87 show that the discharge of the plaintiff was wrongful and contrary to law and that plaintiff has been restored to his position in accordance with the judgment of the Court as of the date of his wrongful discharge, September 19, 1952.

CHARLES F. MCLAUGHLIN,
Judge

(Filed May 21, 1953)

Reporter's Transcript of Proceedings in Civil Action Nos. 5268-52, 139-53

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

C. A. No. 5268-52

A. LINCOLN GREEN, *Plaintiff*,

v.

J. STANLEY BAUGHMAN, President; Federal National Mortgage Association, Defendant.

C. A. No. 139-53

A. LINCOLN GREEN, *Plaintiff*,

v.

FRANCES PERKINS, as Acting Chairman, United States Civil Service Commission, *Defendant*.

Washington, D. C.,
Monday, May 4, 1953.

The above-entitled cases came on for hearing on motions for summary judgment before the HON. ALEXANDER HOLTZOFF, Judge, at 2 o'clock, p.m.

Appearances:

On behalf of the Government:

Mr. Ross O'Donoghue.

Proceedings

The Deputy Clerk: Case of Green versus Baughman.

The Court: You may proceed.

Mr. O'Donoghue: May it please the Court, this is a motion to dismiss two complaints which plaintiff has asked be joined, one naming as defendant the president of the Federal National Mortgage Association, a Federal agency, and the other naming the members of the Civil Service Commission.

The motion is to dismiss a complaint which seeks to compel the reinstatement of this plaintiff to his position as an employee, as an attorney with the Mortgage Association.

He is a veteran, and a wounded veteran, I believe, and has the rights provided by the Veterans Preference Act. Therefore, he is entitled to the benefits afforded by the Veterans' Preference Act, which are found primarily in Section 14 thereof, which is now known as Section 863 of Title 5 of the U. S. Code.

That provides that a veteran may not be discharged unless he is given at least thirty days' advance written notice stating any and all reasons for his discharge "specifically and in detail"—is the phrase used in the statute.

He was given a notice of charges against him. He was given an opportunity to present an affidavit concerning his defense thereto, and after—

The Court: What is the nature of the charges?

Mr. O'Donoghue: The nature of the charges was that he was insulting to fellow employees, that he treated his secretary very badly by using offensive language to her. He even threw a little telephone book at her on a couple of occasions—I suppose an agency one. That he used very insulting language to fellow attorneys; that he refused to take orders; that he was very argumentative in dealing with his superiors.

I may say the statement of charges is attached to the complaint as an exhibit, and it runs for some three pages.

The Court: I didn't want to deflect you from your argument; I just wanted to get it in a general way as to the nature of the charges. You may proceed.

Mr. O'Donoghue: It is very important, however, that we go into the statement of charges, and perhaps at the outset is the most convenient time to do it because it seems to me the case boils down to a question of whether or not these charges comply with the requirements of the statute. That is, whether they are sufficiently specific and in sufficient detail.

The Court: Of course, charges don't have to comply with the requirements of an indictment.

Mr. O'Donoghue: Exactly so, Your Honor. I think that a reading of these charges will show that they are infinitely specific and detailed—much more so than any others I have ever encountered.

The Court: Is that the only point in the case?

Mr. O'Donoghue: As I see it, Your Honor, the plaintiff charges in addition, and has made a cross motion, or a motion for summary judgment on the theory that the president of this Government corporation who preferred the charges and considers the questions of his discharge, was biased and prejudiced, and that he had determined ahead of time to discharge him, and that any answer to his charges was insufficient, would necessarily be insufficient under those circumstances.

I believe that the authorities are unanimous in saying that charges of bias and prejudice cannot possibly be considered by the Court. Your Honor may perhaps remember some years ago in the case of Ascher against Forrestal you quoted the Court of Claims' opinion in Golding against the United States, in which is stated that his removal was a result of concerted action by certain individuals and officials who had entered into a conspiracy, and all that sort of thing.

The Court: I remember that case. I don't think you need labor the point.

Mr. O'Donoghue: Very well, Your Honor. So it seems to me the question comes down to whether or not these charges as shown in the attached exhibit are sufficiently detailed. They charge improper use of Government office and property, improper use of Government personnel—that is, saying that he carried on his business of building a house and acting as his own contractor with Government stationery, typewriters, using his secretary, and so forth.

Improper absences from office without an excuse and without requesting leave. And aside from his refusal to, inability to get along with his fellows.

The Court: I get your point.

Mr. O'Donoghue: Very well, Your Honor. And under those circumstances we believe that the complaint should be dismissed.

The Court: Would you like to be heard?

Mr. Green: May it please Your Honor, my name is A. Lincoln Green. I am not admitted to this bar, of course; I am appearing in person.

The Court: The Court will hear you.

Mr. Green: Yes, Your Honor.

The Court: Are you a lawyer?

Mr. Green: Oh, yes, yes, sir, I was in the grade of GS-13 when this dismissal occurred on September 19, 1952, on charges which were given to me on July 14, 1952.

The importance and gravity of this discharge to me, of course is plain to Your Honor: I was retired for certain disabilities in this war after an accident in the desert on maneuvers, and then came into the Government service.

Of course, even if it were not for these disabilities, I would find it impossible to obtain a position henceforth, whether in the Government or in private practice. On top of that these disabilities prevent me from going back into private practice.

The question here on this motion, I believe, is entirely different from that which Your Honor has been led to believe, in all sincerity, by Mr. O'Donoghue. And also, in so far as the anticipation of the cases and of the legal situation is concerned, I do hope that Your Honor will not anticipate, and allow me to go into the law on the situation.

First, with respect to the charges, and if Your Honor would be good enough to look at them.

The Court: Yes, I have them.

Mr. Green: Your Honor will realize—

The Court: I have read them. I read them during Mr. O'Donoghue's argument.

Mr. Green: Your Honor will realize immediately that there is something suspicious about them.

The Court: I don't realize that, at all.

Mr. Green: I think they are all based on memory of events past. In no case did I receive any warning, in no case was I told about any of these things at any time, although it is alleged in the first one, and it is admitted, that I was never warned of absences.

So that Your Honor can perceive that this is an afterthought in some cases a year and nine months after the alleged events took place.

May I discuss these charges in the light of two cases—Deak against Pace, wherein the Court of Appeals for this Circuit said, "We think that in keeping with the plain terms of the statute and the Secretary's order the information must be sufficient to inform the employee with reasonable certainty and precision of the cause for his removal."

The Court: I think that these charges are quite definite. And if you felt they were indefinite, I suppose you might have had a right to apply for a bill of particulars to your superior.

Mr. Green: No, Your Honor, you have not. And I might add in this respect, aside from that, it is important that Your Honor note that on July 23, nine days after the charges were served upon me, I asked for a new set of charges that would be made definite and certain, and I then pointed out item for item the deficiencies in the charge.

Now, Your Honor, if you will excuse me for saying so, you have just now anticipated me and you may be right, but I would like to get this off my shoulders in view of the importance of this situation to me. Because in the Deak case the Court said, "To avail themselves of this right it is important that appellants be informed of the dates, places, and organizations referred to.

The Court: Have you got the citation?

Mr. Green: Yes, Your Honor. It is awfully important.

The Court: I will send for it. What is it?

Mr. Green: 185 Fed 2nd.

Mr. O'Donoghue: 88 U. S. Appeals D. C. 50.

The Court: You may proceed, Mr. Green.

Mr. Green: The second case to which I wish to refer and thereafter discuss these charges in the light of the

two cases is Anti-Fascist Committee against McGrath, 341 U. S. 123.

The Court: I am familiar with that case.

Mr. Green: It is a long case.

The Court: I am familiar with that case.

Mr. Green: The particular principle I wish to cite, or extract, is as follows, if I may: "A party is entitled to know the charges against him. The charge is flexible. It will mean one thing to one officer, another—"

The Court: Don't read me extracts from cases. Suppose you go on to the situation.

Mr. Green: Despite what Your Honor regards as the detail here, there are a number of telltale phrases that run throughout these charges which make them indefinite, uncertain, and unprecise—lacking in precision. They are, in fact, blanket or omnibus charges.

Let me show Your Honor, in Charge I you find the words, "during the period," "at times," "on numerous occasions," "frequently," "on various occasions."

And in Charge II, "during the period," "during the foregoing periods."

In Charge III the words, "During the period," "during official hours of business," "numerous," "on numerous occasions," "during the time," "during such period," "frequently."

In Charge IV, "During the period," "frequently," "at various times," and so on

Now, consider what that means, Your Honor, at any time that an employee has displeased his superior the superior can draw up blanket charges that during the period of a year and a half he did so and sosand so and so, without having warned him at any time, without complaint having been made at any time.

The Court: Well, now, I (a) alleges that you were warned by the general counsel that such conduct toward office personnel would not be tolerated and must not be repeated and that you stated there would be no repetition of such conduct.

Mr. Green: That is true. Your Honor will have occasion to read my long affidavits in connection with my second point I make.

The Court: What is your second point? I think these charges are sufficiently definite.

Mr. Green: If Your Honor please, I would beg of you, I would beg of you to withhold judgment until you read the memorandum—my memorandum of law.

The Court: It is my custom to decide matters from the bench unless I have grave doubt. I don't take matters under advisement, if I can—

Mr. Green: Your Honor will understand the gravity of this situation to me, and I beg of you only to read this memorandum, because I have spent considerable time at it, and to read it in connection with the Deak case.

My second point with respect to bias, Mr. O'Donoghue, with all due respect, has missed the point here. This also brings up only a question of law.

On July 23, nine days after receiving the charges, I delivered a letter to the president of the Federal National Mortgage Association with a verification attached, wherein I said, "I respectfully ask that you disqualify yourself from sitting in judgment at the hearing of these charges. You will recollect that at the meeting of July 14 I addressed Colonel Reid and asked who would preside at the hearing. He said "Mr. Baughman." You took active part in the discussions of July 7 and July 14 when I made my denials and produced evidence of the untruthfulness of some of the charges. If you did not believe these denials then, you will not believe them at the trial. In signing this statement of charges you showed a ready willingness to sign charges which on their face are incredible. You gave me the alternative of resignation to escape trial. It is the prosecutor, who, being convinced of the guilt of the accused, offers the accused a chance to take a lesser plea. Every single act of yours has been an act of ready willingness—"

The Court: I have read all this, Mr. Green. Please don't take the Court's time to read it again out loud.

Mr. Green: Very well, Your Honor. That was delivered to him long before he deliberated on this case. And you must realize what happened. On July 7 I was called into the office of Mr. Reid and Mr. Baughman, was there, and then he read from a paper or a copy—

The Court: I can't go into all that, because all that is before me is a motion to dismiss the complaint, and I can't go into facts dehors the pleadings.

Mr. Green: This is a counter motion for summary judgment.

The Court: I understand, but if I dismiss the complaint, naturally your motion falls by the wayside.

Mr. Green: True enough.

The Court: So I am first going to determine the defendant's motion to dismiss the complaint. If I deny the defendant's motion, then I will consider your motion for summary judgment. If I grant the defendant's motion, that ends the case, so far as I am concerned.

Mr. Green: I do not see, if Your Honor pleases, how they can be separately considered.

The Court: You are a lawyer, and on further reflection you will see that they must be separated. Not only can they be, but the Court must separate its thinking.

Mr. Green: If you recollection, Your Honor, Mr. O'Donoghue talked of bias, and, for instance, the second cause of action deals—

The Court: Based on bias, and my view is that in a proceeding such as this, bias is not a ground for disqualification of the head of the department. There is no one else that can discharge you except the head of the department.

Mr. Green: On the contrary, Your Honor, the statute does not make any particular person the judge of this proceeding. He was a judge of this proceeding.

The Court: There is no provision in the law for disqualifying the head of a government agency for bias in a proceeding to discharge an employee.

Mr. Green: Your Honor, there is no need for such a provision, with all due respect to Your Honor's learning,

of which I understand that you have a great deal. Because, wherever bias occurs in a quasi judicial proceeding, or any proceeding, the courts have stopped the proceeding then and there whenever they can.

The Court: I am going to hold against you on that. I think your contention is not well founded. In a judicial proceeding, yes; but not in a proceeding before an administrative officer.

Mr. Green: Are you referring merely to administrative officers of this kind or all administrative officers?

The Court: For proceedings such as this, for proceedings to remove an employee, in other words.

Mr. Green: I can scarcely—I don't want to take issue with Your Honor on that—

The Court: You are at liberty to take issue, but—

Mr. Green: It won't do me any good.

The Court: I beg pardon?

Mr. Green: I am at liberty to take issue, but it won't do me any good unless I can convince Your Honor.

The Court: I have read your memorandum. I have been reading it during the argument. I don't think you can disqualify the head of the department for bias from discharging an employee.

Mr. Green: But, Your Honor, the actual discharge is one thing, but the actual deliberation upon this case—

The Court: I beg pardon?

Mr. Green: But the actual deliberation upon this case, of Mr. Baughman, if he were biased, is certainly ground for disqualification.

The Court: I don't understand you.

Mr. Green: Mr. Baughman deliberated on this case.

The Court: Yes.

Mr. Green: And the facts show, if Your Honor will read—may I read—

The Court: No, I am going to decide the motion to dismiss the complaint first, solely on the allegations contained in the complaint. I have examined all of the papers. I am inclined to think that the amended complaint does not state a cause of action.

The Court appreciates the importance of this matter to you, but discharges of Government employees are not ordinarily subject to the Court review.

What relief do you seek? To have this Court order that you be reinstated?

Mr. Green: That's right.

The Court: I don't think I have any power to do that. That has been held time and time again.

Mr. Green: No, on the contrary, in the Deak case—Deak against Pace—and many others that I cite here, it has been done.

The Court: Very well.

Mr. Green: There are five cases that I have cited here which hold to the contrary.

The Court: I think I get your point, Mr. Green.

Mr. O'Donoghue, what do you say about the Deak case, because the Deak case goes a little further, perhaps, than some of the prior cases? What do you say about it?

Mr. O'Donoghue: I recognize that as binding authority.

The Court: I think, prior to the Deak case, it was generally understood that this Court could not order reinstatement of an employee. The only remedy an employee wrongfully discharged had was to sue for his back salary in the Court of Claims. Wasn't that the general rule?

Mr. O'Donoghue: Yes, I believe so, Your Honor.

The Court: The Deak case, sub silentio, seems to have changed the rule.

Mr. O'Donoghue: I think it was recognized there that those plaintiffs would be reinstated, provided that it was found that the charges were insufficient. I think the same would be true here. We believe that the charges need to be sufficient to satisfy the provisions of Section 14 of the Veterans Preference Act. But we believe that they do meet whatever requirements may be laid down in the Deak case for specificity.

The Court: Of course, in the Deak case Judge Proctor says, after stating the charges, it will be noted that times, places and organizations were not specified.

Times aren't specified in these charges, except a range or period.

Mr. O'Donoghue: That is true, except that one range, for example, is from the end of November, I think, until the 1st of February, a very short period.

The Court: It seems to me that the charges might have been more specific.

Mr. O'Donoghue: I don't believe it is necessary that they be so specific as that, especially in a case of this kind.

The Court: To say that in between November and January, which is what this says, you were discourteous to your stenographer—of course, nobody should be discourteous to anyone that works for him, but that is pretty indefinite, isn't it?

Mr. O'Donoghue: I don't think so. It then spells out the actual incident that occurred. And I don't think that this plaintiff complains that he was not aware of the incident being referred to, because he answered and attempted to explain under what circumstances he threw the telephone book, for example.

The Court: This is a motion to dismiss. I haven't got his answer before me on a motion to dismiss.

Mr. O'Donoghue: No.

The Court: I can only go by the pleadings and their exhibits.

Mr. O'Donoghue: Let me back off from that position, because that would—

The Court: For instance, charge 1 (b): "That during the period between February 1951 and June 1952, your attitude toward the second stenographer assigned to assist you was on numerous occasions distasteful and insulting, rude, harsh, and abrupt, notwithstanding your having previously been warned as to such conduct."

In the first place, if this conduct had continued during all this time, why did it take so long to find it out?

Mr. O'Donoghue: Of course, that is another question, and I don't think it is really for us to consider. He may have been treated very leniently, but merely because he

was treated leniently does not mean that what he was doing was insufficient in the aggregate.

The Court: I have seen this sort of thing happen—"You have been working for this agency ten years and you have been inefficient all this time." It is a funny thing that it took ten years to find out that a person has been inefficient. It naturally arouses suspicion.

Mr. O'Donoghue: I don't think any such thing as that would stand up, and I don't believe it is ordinarily done. If they attempt to charge them with inefficiency, there is the provision for efficiency ratings, and if they are rated inefficient, then it is necessary to proceed to their discharge. Here, however, I think that when they are identified, if perhaps not precisely by the date, but in detail the nature of the occasion and what took place in considerable detail, I believe that is ample.

The Court: Mr. O'Donoghue, perhaps it is an intrusion on the Court's part to make the suggestion I am about to make, but I do suggest that copies of the Court of Appeals opinion in Deak versus Pace be circulated to every department and agency of the Government, as a guide.

Mr. O'Donoghue: Some effort is being made along those lines, Your Honor, because many agencies apparently are not aware of quite the detail that is necessary in view of the Deak case. But I believe that that was not so in this case. I believe there was an awareness of that necessity and therefore there was great detail.

Mr. Green: May I have just a minute, Your Honor?

The Court: I will give you an opportunity to reply.

Mr. Green: I have refrained from intruding on the merits.

The Court: I am not going to discuss the merits.

Mr. Green: Believe me, Your Honor, not a single one of the facts stated there is true, or, as a matter of fact, lack of facts.

The Court: I cannot go into that.

Mr. Green: There has been talk about throwing the telephone book, but you will notice—

The Court: I am not going to go into the merits. I

don't think I have any right to go into the merits.

Mr. Green: I pray you to do this, Your Honor: I ask Your Honor, because I haven't been able to bring out all the essential facts yet, but they are in the memorandum.

The Court: I have examined all the papers.

Mr. Green: And I have got the long affidavit which had to be long in connection with the bias, see.

The Court: I have your point, and I don't want any repetition.

Mr. O'Donoghue: May I state to Your Honor just with regard to the dates, that plaintiff says in his memorandum at page 6—

The Court: I think the plaintiff is entitled to make opposing arguments. If you want to argue, I will have to give him an opportunity to argue again.

Mr. O'Donoghue: Very well.

The Court: While the Court is of the opinion that some of the charges presented against the plaintiff are insufficient under the authority of Deak v. Pace, 88 Appeals D. C. 50, nevertheless, at least one of them gives sufficient detail, and that is the charge contained in I (a).

That charge refers to a specific episode which is identified by the facts and by the assertion that the plaintiff was warned that such conduct must not be repeated and that he stated there would be no repetition.

Most of the other charges, if not all, are insufficient under the rule of the Deak case. It is quite obvious that the person who framed the charges was not familiar with that case, and I think that the rule of that case should be brought to the attention of all administrative officials who deal with charges against personnel.

In view of the fact that one good charge is enough to justify severance from the service, it is sufficient to warrant a dismissal of the first count of the amended complaint.

The second count of the amended complaint is insufficient in that bias of a personnel officer does not disqualify him, as a matter of law, from discharging an employee.

Accordingly, the defendant's motion to dismiss is granted.

(Filed May 20, 1955)

Harry M. Hull, Clerk

Transcript of Proceedings

HEARING

A. LINCOLN GREEN

Office of the Chief Law Officer
March 4, 1953

CIVIL SERVICE COMMISSION
WASHINGTON, D. C.

* * * * * * * * * * *

Mr. Coolidge: I should like the record to show that Mr. Arend, from the Housing and Home Finance Agency, and Mr. Meyer and myself, of the Federal National Mortgage Association, are appearing only as observers. We are willing to stand on the record as it is now, before the Commission.

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Mr. Madden: I would like to raise a question, and I don't know whether you would think it would be proper to have Mr. Coolidge be a witness to this, but he mentioned the fact that the witnesses that Mr. Green had requested from the agency have been either told about it or asked to come. Right here I'd like to know whether they were asked to come or not.

Mr. Ruediger: All right, sir. After Mr. Green gave me his letter requesting certain named witnesses I passed that information on to Mr. Coolidge.

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Mr. Coolidge: I talked with both Miss Mary Smith and—

Mr. Meyer: Edith.

Mr. Coolidge: —Edith Smith—told them of the time and place and hearing, and Mr. Green had requested their presence. I also told them that there would be no—they

were privileged to come or not—that they would not be charged any time off so far as attendance was concerned—and I also called Mr. Tom Wilson, who is not now with FNMA—told him the same thing. Mr. Wilson said that he would have appeared if the Commission had requested his presence, but otherwise he didn't think that he would.

Those are the only three that I contacted.

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Mr. Madden: Then I assume, Mr. Coolidge, that you didn't either ask them to come or suggest that they come?

Mr. Coolidge: I told them it was up to their own individual decision—that Mr. Green had requested their presence and that they could go or not as they themselves decided.

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Mr. Madden: Did you suggest that they come?

Mr. Coolidge: No.

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Mr. Ruediger: Before you do it, Mr. Madden, inasmuch as there seems to be some confusion on that point I will state that in regard to witnesses—for the record I am making this statement—that the Commission has no subpoena power, and I think the action taken in this case is the action that has been taken in any other similar case. We have passed on the individual's request to the employing agency and let them do what they decided was best.

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Mr. Green: C-a-h-n. These witnesses, especially Miss Cahn, are absolutely necessary for me to prove that the charges have no basis, and I can do it absolutely with them.

It is my understanding that a hearing of this kind is not one where there are antagonists but where there is an endeavor to ascertain the truth, and in that respect, while the powers of the Civil Service Commission may be limited, those in authority at Federal National Mortgage Association could have said to these witnesses, "You ought to come down and testify to the truth."

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Mr. Green: Now in that connection I wish to offer in the record a copy of my letter to Mr. Wilson, which was registered, return receipt requested, asking him to appear and testify.

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(The oath was administered to Miss Drwal by Mr. Ruediger.)

Mr. Madden: Miss Drwal, where are you presently employed?

Miss Drwal: At Reconstruction Finance Corporation.

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Mr. Madden: This is fine. This is fine.

You are working at the RFC now? Yes.

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Did you at some period when you were working for the Reconstruction Finance Corporation have occasion to know Mr. Green?

Miss Drwal: Yes. I worked for him for 4 years.

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Mr. Madden: And those years were which years, please?

Miss Drwal: Well, from about '45 to—including '49.

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Mr. Madden: Why did you leave? Why did you cease working for Mr. Green after 4 years?

Miss Drwal: Well, my job was abolished.

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Mr. Madden: Well, did you take dictation from Mr. Green?

Miss Drwal: Well, I came in as a typist to work for Mr. Green, but then he encouraged me to take up dictation again. I mean I took it in school and I didn't know it very well, but he encouraged me in it, so he dictated a little bit to me every day. So I took dictation.

Mr. Madden: Now did—by the time that you had finished working for Mr. Green were you, would you consider, fairly efficient at taking dictation?

Miss Drwal: Yes, sir.

Mr. Madden: So that Mr. Green was working with you during the period where you were learning how to take—or learning again how to take—dictation?

Miss Drwal: That's right.

Mr. Madden: Was your relationship with him a pleasant one?

Miss Drwal: Yes, it was.

Mr. Madden: Was he rude and discourteous to you very often?

Miss Drwal: He was never rude and discourteous to me.

Mr. Madden: He was never rude?

Miss Drwal: That's right.

Mr. Madden: Did he ever swear at you?

Miss Drwal: Never.

Mr. Madden: Did he ever swear at anyone else there in your presence?

Miss Drwal: I don't recall him ever doing that in my presence.

Mr. Madden: Did he ever have fits of anger?

Miss Drwal: Never to me.

Mr. Madden: Now he was working with other lawyers then, wasn't he—in the office with other lawyers?

Miss Drwal: Yes, sir.

Mr. Madden: Did he ever refer to his associates and colleagues as imbeciles and ignoramuses and stupid lawyers—just generally discreditable terms?

Miss Drwal: No, sir.

Mr. Madden: Now did he—well, can you recall how he used to beckon you when you worked for him?

Miss Drwal: Well, when I first worked with him I sat right in front of him, so naturally he would just say, oh, "Take a letter," or whatever it was he wanted me to do, and he was always courteous when he asked me.

Mr. Madden: Now if he would say to you, "Take a letter," would that offend you?

Miss Drwal: No, but I would like to add he usually said, "Would you please take a letter?"

Mr. Madden: Was he ever harsh and abrupt with you?

Miss Drwal: No.

Mr. Madden: Was he ever insulting to you?

Miss Drwal: No, sir.

Mr. Madden: Did he appear to you in relation to his colleagues and also the secretarial help to be arrogant?

Miss Drwal: No.

Mr. Madden: Did Mr. Green ever go beyond—let's say beyond the call of duty in taking a personal interest in your outside activities?

Miss Drwal: Well, he always tried to encourage me in studying—in dictation—my work.

Mr. Madden: Yes.

Was there ever any question of your going to outside school?

Miss Drwal: Yes.

Mr. Madden: What was that, please?

Miss Drwal: Well, he suggested that I should take a course at the Agriculture School, and that he would be willing to help me out financially.

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Mr. Madden: Do you ever recall his throwing any papers at you or telephone books at you?

Miss Drwal: No, sir.

Mr. Madden: Do you recall him throwing them toward you?

Miss Drwal: No, sir.

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(The oath was administered to Mrs. Ryan by Mr. Ruediger.)

Mr. Madden: Where are you presently employed, Mrs. Ryan?

Mrs. Ryan: Reconstruction Finance Corporation.

Mr. Madden: Did you ever work for Mr. Green?

Mrs. Ryan: Well, not officially, but occasionally when he was—when he didn't have a secretary.

Mr. Madden: You were never assigned to him?

Mr. Madden: How long did you know Mr. Green there at RFC?

Mrs. Ryan: Well, I actually met Mr. Green I think in March 1945 when I first came to the legal division of United States Commercial Company. His office was right next door to Mr. Schuster, S-c-h-u-s-t-e-r, the attorney for whom I worked at that time. I had just been assigned to the legal division.

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Mr. Madden: Were you able to observe Mr. Green's demeanor and conduct and general character directly from seeing Mr. Green and being in fairly close contact with him?

Mrs. Ryan: Well, yes.

Mr. Madden: Were you also able to judge it from an association with Frances Drwal and what she had to say about her boss?

Mrs. Ryan: Well, yes. I don't recall that she discussed him often.

Mr. Madden: And you testified that on occasion you did work for Mr. Green even though you weren't directly assigned to him?

Mrs. Ryan: Yes.

Mr. Madden: Now on those occasions was he courteous to you?

Mrs. Ryan: Definitely.

Mr. Madden: He never swore at you?

Mrs. Ryan: No, sir.

Mr. Madden: Did you ever hear him swear at Frances or anybody else?

Mrs. Ryan: I never heard him swear at Frances.

Mr. Madden: Did you ever see him in a fit of temper there at the RFC?

Mrs. Ryan: Well, it would depend on what you would call a fit of temper. I have seen him angry. I have seen other people in offices angry. I mean it doesn't stand out.

Mr. Madden: Yes. Now from your association with him and observation of Mr. Green then would you have any reason to describe him as rude or discourteous?

Mrs. Ryan: No.

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(The oath was administered to Mr. Coolidge by Mr. Ruediger.)

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Mr. Green: Mr. Coolidge, you drafted these charges, did you not?

Mr. Coolidge: I assisted in their drafting.

Mr. Green: Did you make up the first draft?

Mr. Coolidge: Probably so.

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Mr. Green: Now with respect to that memorandum from Mr. Baughman to Mr. Foley—

Mr. Ruediger: What memorandum are you speaking of, Mr. Green?

Mr. Green: —dated September 15th, 1952, which I am showing to you, what part did you play in that?

Mr. Coolidge: I participated in the preparation of that just as—same as I did the preliminary, or the statement of charges.

Mr. Green: When you say participated can you not tell us exactly what you did? Did you dictate it originally?

Mr. Coolidge: The chances are that's correct. The chances are that I made the first draft of that statement.

Mr. Green: Well, Mr. Coolidge, why do you say chances? This is September 15th. Don't you know?

Mr. Coolidge: Well, I will answer it this way: that in the normal course of events I probably would have prepared the first draft, so that I assume from that that I did.

Mr. Green: Well, we still do not know, Mr. Coolidge, whether you did absolutely. Can you not say that you did or did not?

Mr. Coolidge: No, I cannot.

Mr. Green: You say then the best answer you can give is that you probably prepared it?

Mr. Coolidge: That's right. That's right.

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Mr. Green: Now I call your attention to the last sentence under charge I. (Handing to Mr. Coolidge.) Would you kindly read it?

Mr. Coolidge: Yes. I have read it.

Mr. Green: And you drafted that too?

Mr. Coolidge: As I have stated, I did.

Mr. Green: Now in the letter of September 15th—in the memorandum of September 15th from Baughman to Foley it says:

"The Charges were carefully drawn *after* the statements of the various witnesses were reduced to writing, and the Charges were based entirely on the statements of the witnesses."

You drafted that too, did you not, or you were familiar with it?

Mr. Coolidge: I was no doubt familiar with it.

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Mr. Green: Now would you read Mr. Gordon's statement and point—and point to any statement therein which states that I called him ignoramus? Would you read it? Read his—

Mr. Coolidge: I object to that. The record speaks for itself—what it says.

Mr. Green: The record speaks for itself, but I am here—I have stated that there has been falsification. Now I am here to prove the falsification and therefore it is not a case of the record speaking for itself.

Mr. Ruediger: Well, Mr. Green, I will sustain his objection to that. If he included it in the charges and if it is a false statement it should be evident to us in examining the evidence.

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Mr. Green: May he now look at Mr. Gordon's statement? I have a copy of it here. Would you look at Mr. Gordon's statement (handing to Mr. Coolidge) and point to any part of that statement that supports the sentence in which it is stated that I called someone ignoramus?

Mr. Coolidge: I object to the question. The record speaks for itself.

Mr. Ruediger: I will sustain the objection on the same ground as before, Mr. Green.

Mr. Green: You are stopping me from showing that there has been deliberate falsification here and from showing it through this witness.

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Mr. Ruediger: I'd like to get this clear for Mr. Green. This document that was prepared and dated September the 15th, which Mr. Coolidge says he participated in the preparation of, is not evidence in this case. It is the agency's discussion of their consideration of the evidence. The Commission is not bound by that. We are going to look to the actual evidence. Now if an individual has included something in his analysis, if I may call it that, of the agency's case that is wrong, we will take note of that. You may direct our attention to that.

Mr. Green: Mr. Ruediger, that is not the point that I am making, of course. It is not a case of one or two casual mistakes that are permissible.

What I am trying to show is that those behind these proceedings, and particularly the person who drafted the charges and this memorandum of September 15th, have exaggerated and falsified.

It is not a question merely of finding differences. It is a question of having false charges here.

And I have got a right to prove falsification from the witness right in this room, and it's—and to prevent me from doing so I submit is highly prejudicial.

Mr. Ruediger: I am not preventing you from cross-examining any witness in this room on his testimony, but you are asking this man to give an opinion as to why he

feels a document he participated in writing is supported by the evidence.

Mr. Green: Mr. Ruediger, I submit I haven't asked for an opinion.

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Mr. Green:

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So let me get into the record some things that occurred on July 7th when I was called in by Mr. Reid to his office.

He called me in. He said, "Can you step in here for a minute, Abe?" and I entered and Mr. Baughman was present, and Mr. Reid said, "We want you to get another job. I don't think you have been very happy here." I agreed that I had not been happy, see, and I told him, "I have tried, but it is not easy."

He then made great inquiries as to whether I had any hearings scheduled or conferences or meetings for another job, see. I said, "No," and to my recollection I said—cross out "to my recollection" (to the reporter). He then said, "If you don't get another job charges will be preferred," and I asked him, "On what ground?" and he said, "Incompatibility," apparently having in mind the recent disagreements with Mr. Gordon.

I said I was not aware of anything to warrant charges that I had done, and I then asked him—in the course of the conversation I asked, "If charges are contemplated or have been contemplated, how will it be possible for me to get another job?" because wherever you go they are going to refer back for some kind of recommendation with respect to this man or for some opinion, and obviously where charges are to be preferred or were contemplated an honest answer that "charges were contemplated against this man" would have prevented me from getting another job. I asked him, "How can I now get another job?" and he said, "Well, that can be arranged," see.

Then in the course of the conversation Mr. Reid read from a paper the substance of some of the charges. I recollect asking him at one time—whether it was the

meeting of July 7 or 14th I do not recollect—there is a statement that I threw papers toward Miss Cahn—and I asked, "Well, did I throw it at her or did I throw it toward her? What is the meaning of this word 'toward'"? And he contemplated the words and he says with a slight smile, "I don't know."

Then I remember asking him with respect to the statement that I swore at the girl. He said—he read that part of it which said, "God damn it to hell, why can't you do things right?" And in that same charge it says that I swore at her. I said, "Well, is it that I swore at her or just swore?" He looked at it and he says, "Well, I don't know."

Then I said, "Well, why was I not told more of these complaints?" see, and he said, "Well, we did not"—"We did not know of them but found out about them through the auditor's report."

Well, let me explain that a month or two prior to that, as Mr. Coolidge knows, the auditors had come up to make an audit of the work load in the legal department and they asked me the various questions and they took that file and I made no bones about saying that I was not kept busy, see. I do not know what is in the auditor's report at all, but I said, "What has the auditor's report got to do with these things?" He lay back there and he made no answer, see, but it was significant to me, see, that I was going—that what they were after and what their real grievance is, as I have stated in the latter half of my affidavit what the real grievance here is.

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Then at this conversation Mr. Baughman says, "You stay in your office and think only of the law."

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Now with respect to telephone calls. There's—even Mr. Baughman by the evidence I am about to relate did not believe that the making of telephone calls was a cause for discharge.

He had been out to my house in—to my apartment—in March of last year on a Saturday, and I took him up to

the house. And then the following week he called me and he says, "I have got a cousin who is interested in getting a house or building one." Will you get in touch with him? Here's his telephone number."

(Filed May 20, 1955)

Statement of Charges

July 14, 1952

Mr. A. Lincoln Green
Federal National Mortgage Association
Room 857, Lafayette Building
811 Vermont Avenue, N. W.
Washington, D. C.

Subject: Statement of Charges

Dear Mr. Green:

Charges of improper conduct, as described below specifically and in detail, in the course of your employment by Federal National Mortgage Association, a corporation wholly owned by the Federal Government, are hereby preferred against you. In accordance with established policy and Civil Service Regulations you will be given an opportunity to answer these charges personally and in writing and to furnish affidavits in support of your answer. Your answer and affidavits, if any, will be given full consideration in determining whether the proposed adverse action indicated below shall be taken.

Charge I. Improper Conduct toward Office Personnel.

(a) That during the period between November 1950 and February 1951, you were at times rude and discourteous and used severe language to the stenographer who was assigned to assist you; and on one occasion you flew into a rage because she failed to bring her notebook when you called her, although her desk was only ten feet from yours, and used abusive language to the extent that she was made to cry and, as a result thereof, she complained to the

General Counsel and threatened to resign unless given another assignment. Subsequently she was given another assignment. At that time you were told of the complaint made by the stenographer, and you were warned by the General Counsel that such conduct toward office personnel would not be tolerated and must not be repeated. You stated there would be no repetition of such conduct.

(b) That during the period between February 1951, and June 1952, your attitude toward the second stenographer assigned to assist you was on numerous occasions distasteful and unpleasant, insulting, rude, harsh, and abrupt, notwithstanding your having previously been warned as to such conduct. You frequently lost your temper, and on two occasions became so enraged that you threw a small telephone book toward her and hit her desk. You threw papers to the floor at one time when the lawyer sharing your office asked the stenographer to do some work for him. On various occasions you knocked on your desk without calling your stenographer and said "Take this!" or "Do this!". On other occasions you said to her "You come over here and you come fast!" Once you yelled at her and said if she didn't like the way things were done in your office she knew what she could do. On another occasion you swore at her when she passed on to you a telephone number that had been given her erroneously by saying "God damn it to hell, why can't you do things right."

That as a result of your conduct the stenographer became so upset and disturbed she was made to cry on various occasions; and finally in June 1952 this second stenographer also threatened to resign her Government position unless given another assignment, which was done in order to retain her services.

That you have been critical and arrogant toward your co-workers in that when they have in good faith disagreed with you on some point of law, you have called them "ignoramus" or "imbecile".

Charge II. Improper Use of Government Office and Property.

(a) That during the period between November 1950 and February 1951, you were assigned Government office space, including miscellaneous office supplies and equipment, and the services of a Government stenographer to carry on and perform your official duties for the Association.

During that period you improperly used the office and its miscellaneous supplies and equipment by requiring the stenographer to type your personal letters, or letters other than official letters, on Government typewriters, and to use Government stationery and other supplies and equipment.

(b) That during the period between February 1951 and June 1952, you were assigned Government office space, including miscellaneous office supplies and equipment, and the services of a Government stenographer to carry on and perform your official duties for the Association. That beginning in the summer or fall of 1951 and extending for a period of over six months and ending in the spring of 1952, a house was being constructed for your personal account.

During the foregoing periods and particularly while the house was in process of construction and immediately prior thereto, you improperly used the office and its miscellaneous equipment, including telephones, typewriters, file folders, stationery, filing cabinets, and other supplies and equipment, by making and receiving numerous telephone calls concerning your personal business; and by requiring your stenographer to type personal letters for you, to keep personal books and records for you, and to make personal telephone calls for you.

Charge III. Improper Use of Government Personnel.

(a) That during the period between November 1950 and February 1951, you improperly used the services of the Government stenographer who was assigned to assist you by requiring her to write personal letters for you and to

sort various personal invoices, bills, and other papers; all during official Government working hours.

(b) That during the period between February 1951 and June 1952, and particularly while the house was under construction and immediately prior thereto, and during official hours of business, you improperly used the services of the Government stenographer who was assigned to assist you, in the following respects:

1. You required her to make numerous telephone calls concerning your personal business to supply houses and stores selling building materials and supplies, and to your architect and to contractors.

2. You required her to write letters and address envelopes to contractors and supply houses concerning bids, estimates, prices, and other matters, all relating to your personal business.

3. You required her to set up and maintain personal correspondence files for you, and files for bids and estimates.

4. You required her to prepare personal checks and maintain personal check books and records for you.

5. You required her on numerous occasions to leave the Government office and building where she was employed to take care of personal business for you, including errands to put coins in the parking meters where your personal car was parked on the street.

That the improper use of the stenographer, as set out above, particularly during the time the house was under construction, required her to devote practically three-fourths of her time to your personal work, leaving only approximately one-fourth of her time available for her Government duties; that during such period you frequently interrupted this stenographer while she was performing official work for another lawyer who shared your office space, and required her to attend to your personal business and to delay completion of such official work, and

such official work was frequently delayed and postponed as a consequence thereof.

Charge IV. Improper Absences from Office.

That during the period of six or more months while your house was under construction, you frequently absented yourself from your office during official working hours at least two or more hours at various times daily, without permission and without leaving word of where you were going. You failed to submit the required leave slips for such absences, nor did you account for or explain the reasons for such absences.

Charge V. Refusal to Respect Authority of Superiors.

That during the period between April 1951 and April 1952 you were frequently resentful of the authority of your immediate superiors to the point of insubordination. Almost consistently you adopted an argumentative attitude when your superiors expressed any disagreement with the conclusion you reached on any matter and plainly showed and expressed resentment to any suggestions for change or further research. On one occasion, involving preparation of a legal instrument, you were unwilling to make a change suggested by your superior, an Assistant General Counsel, and he was forced to order you to make such change. On another occasion you had been requested by an Assistant General Counsel to write a letter which subsequently did not meet with the approval of the Assistant General Counsel. When he suggested a change, you informed him that if he did not like the way you had prepared the letter he could change it himself or get someone else to do so.

* * * * * * * * *

You are advised that this letter constitutes notice of proposed adverse action, in accordance with Section 14 of the Veterans Preference Act of 1944; and that the proposed adverse action is discharge, and that the pro-

posed effective date thereof is August 15, 1952, at the close of business on that day.

During the notice period mentioned above, you are being retained in an active duty status.

You will be given a period of time terminating at the close of business on July 31, 1952 to answer the foregoing charges personally and in writing and to furnish affidavits in support of your answer. Such answer and affidavits, if any, should be submitted in triplicate to J. S. Baughman, President, Federal National Mortgage Association, 811 Vermont Avenue, N. W., Washington 25, D. C. Failure by you to answer within the time allowed will result in the charges being considered sustained.

Very truly yours,

/s/ J. S. Baughman
J. S. Baughman
President

I certify that the original statement of charges, of which the foregoing is a true copy, was delivered by me personally to Mr. A. Lincoln Green, this July 14, 1952, at 2:45 o'clock, P.M., E.D.T.

/s/ Robert Newton Reid

A Certified True Copy:

P. J. Sadoti
P. J. Sadoti
Acting for Harrison E. Meyer
Personnel Officer

Letter from Green to Baughman, July 23, 1952

1305 Key Drive
Alexandria, Virginia
July 23, 1952

Mr. J. S. Baughman, President
Federal National Mortgage Association
Room 857, Lafayette Building
811 Vermont Avenue, N. W.
Washington, D. C.

Dear Sir:

On July 14 Colonel Robert N. Reid, General Counsel of F.N.M.A., delivered to me in your presence a letter entitled "Statement of Charges", which required answer by July 31, 1952.

I am unable to answer the charges for the following reasons:

The statement of charges does not inform me with reasonable certainty and precision of the causes for my discharge. It fails to state specifically and in detail the reasons for the proposed action, as required by Section 14 of the Veterans Preference Act of 1944, in that it fails to state facts that will inform me of the specific issues I am to meet and fails to identify the incidents alluded to so as to refresh my recollection, enable me to defend myself, and produce probative evidence to meet the charges. It fails to state that my discharge would promote the efficiency of the service, and in what respect and for what reasons the efficiency of the service would be prompted by my discharge.

As a result, the accused is restricted in his defense to general denials. The statement of charges narrows the issue to a question of whether the accused's denials are to be believed. Upon appeal, the judgment of the trier of the facts upon an issue of belief will not be disturbed. Yet the accused may have convincing evidence that will prove his innocence if the charges were specific and apprised him of the issues he must meet.

In sum, the statement of charges violates the fundamental principles of our system of justice that the defendant must be given full opportunity to defend himself and he must be informed specifically of the charges he must meet so that he can defend himself. I respectfully ask that a statement of charges be served upon me that will state facts, enable me to identify incidents, and produce available evidence in my defense.

I shall now point out, item by item, the defects in the charges, discussing the merits, insofar as necessary, to demonstrate these defects.

Charge I (a). It is stated that at times I was rude, discourteous and used abusive language to the stenographer assigned to assist me. These acts are said to have occurred between November, 1950 and February, 1951, more than a year and a half ago. No facts are set forth to enable me to identify a single act. What is this rude, discourteous and abusive language? No contemporaneous record was made of the alleged abusive language, which is now deemed so serious as to justify my discharge. There is nothing to refresh my memory of events that occurred more than a year and a half ago. What am I to meet and how am I to meet it? There is no way of knowing whether there is substance to these accusations or whether they are merely subjective emotional reactions. In a year and a half, there may have been times when one's secretary may have thought him to be rude or discourteous. She may have considered that he did not pay attention to her personality. Or, indeed, he may have been unwittingly rude, feeling unwell and being perturbed by personal matters. Are such vague, unsubstantial charges to constitute the basis for depriving a disabled veteran of his only livelihood? Do they in fact constitute a charge?

It is said that at the time, I was told by the General Counsel of the complaint, that I was warned that such conduct toward office personnel would not be tolerated and must not be repeated, that I stated that there would be no repetition of such conduct. What is this conduct? When

did the General Counsel warn me? What did he say? Will the General Counsel make an affidavit that he warned me? Will he set forth the facts and the words he used and submit himself to examination on this issue?

These general allegations can be met by me only with a general denial. These denials have already been made to you at the meetings of July 7 and July 14. It is evident that you did not believe them, for the charges were subsequently handed to me. If you did not believe me then, you will not believe me at the hearing at which you intend to preside. In the present state of the charges there is little more that I can offer. Upon these generalities a finding of guilt is a certainty, no matter how much proof I can produce to meet specific issues.

Charge I (b). It is said that during the period between February, 1951 and June, 1952, my attitude toward my second stenographer was on numerous occasions distasteful, unpleasant, insulting, rude, harsh and abrupt. I am accused of an attitude. The liberal use of adjectives, characterizing an attitude, does not constitute a charge. There is here nothing tangible and concrete that I can meet. To charge a person with adjectives and attitudes indicates a dearth of facts. These charges were drawn by lawyers trained to deal in facts. Has it not occurred to you that if the investigation disclosed facts, they would have set them forth?

It is said that I frequently lost my temper. What were the occasions? What are the facts indicating a loss of temper? Was it a loss of temper or something less, to which all human beings are subject? How many times is "frequently?" If generalities and descriptive adjectives constitute reasons, then the statute protecting veterans from discharge, except for cause, is but an illusion. The head of an organization can get rid of a veteran employee who has displeased him at will. These charges give but lip service to the requirements of the statute.

It is said that my secretary threatened to resign unless given another assignment, which was done in order to

retain her services. I shall meet this issue at the proper time. Cannot I be told when this happened, what she said, and the facts which prompted her to complain? Will the General Counsel make an affidavit to the effect that she threatened to resign, setting forth facts, and submit himself to examination on this issue? In this connection, it is significant that she remained with me a year and a half, despite the adjectives and the quoted statements in this charge. It is common knowledge that no stenographer in government service today need submit to such gravely insulting conduct a single day. There are too many jobs open to her.

The accused has received two efficiency ratings since the incidents alluded to in the charges. Can the management go behind these, where no fraud or concealment has been alleged or practiced.

It is said that on two occasions I became so enraged that I threw a small telephone book toward her and hit her desk. When? Under what circumstances? Can I not be given a shred of fact that will enable me to identify the incident, refresh my memory, and present evidence that it did not occur? It is said that I threw a small telephone book *toward* her. I did it not once but twice. You know the stenographer. If she would overlook this insulting conduct the first time, is it conceivable that she would overlook it the second time and fail to report it?

It is said that on various occasions I knocked on my desk without calling my stenographer and said "Take this" and "Do that." This is not gentlemanly conduct, admittedly. I shall show the charge to be false at the proper time if facts are stated to enable me to identify the incident. Does this statement constitute a charge? There are situations where the stenographer and the dictator may have come to an understanding that the easiest way to call her might be by knocking. Nor are the words "take this" or "do that" necessarily discourteous.

These alleged incidents were never recorded. No complaint was made and no warning given. Can the management, long after the alleged incidents are said to have occurred, send an investigator into the field to rake up every scrap of derogatory information, throw it indiscriminately into a paper called a statement of charges and demand an answer, knowing that it will be impossible for the defendant to answer charges so wide in scope, going back a year and a half, of which no record was made and no warning given? If you throw enough mud some will stick. The ethics of this proceeding is questionable. No man's reputation or job is safe if this can be done. This is clearly not the impartial inquiry into the facts to which an accused is entitled. How far back can the investigator go in his search? Is there no locus poenitentiae?

It is evidently the intent to portray me as habitually discourteous and impolite. Have you had any occasion to note habitual discourtesy and impoliteness on my part?

It is said that on other occasions I said to her: "You come over here and you come fast." What were the occasions? Can I not be given sufficient data to identify the occasions? Am I to be limited merely to a general denial upon which the trier of the facts can find me guilty? If the stenographer remembers the quoted words, surely she must remember the setting and the facts. The quoted words are said to have been uttered on many occasions. How often could I repeat these insulting words without complaint? Do you think that Colonel Reid would have overlooked the repetition of such words and have failed to warn me? One thing a man learns the first day with the government, and that is that commanding a stenographer would cause a reverse reaction, that habitual discourtesy would cause prompt complaint.

It is said that I once yelled to her that if she didn't like the way things were done in my office she know what she could do. Can I not have the date and some facts surrounding the incident that would refresh my recollection so that I may be able to meet facts with facts and not be

limited to a general denial? You know the girl in question. Is she meek and mild? Would she stand for my "yelling".

It is said that I once swore at her, saying "God dammit to hell, why can't you do things right!" This is the climax. If she had hitherto overlooked my shortcomings, if she were as forgiving as an angel and as patient as Job, these insulting words must certainly have caused complaint. Did she complain when they were uttered? Why, no man would put an iota of credence in such a statement if he discovered that the stenographer did not complain, any more than a judge would believe an accusation by a girl that she had been forcibly violated, made long after the event.

Let me recall to you the significant fact that at no time were any of the incidents mentioned in the charges called to my attention, at no time were any complaints made. On Monday, July 7th, Colonel Reid said he wanted me to get another job and he referred to an attitude on my part. He brought up the fact that an Assistant General Counsel had obtained a better job, thus indicating that jobs were available but that I had not made sufficient effort. He asked me if I had any interviews scheduled in the near future. At one point you commented that I viewed the matters only from a legal point. At another time you said that I had kept to my room, remarked on the fact with a laugh that I was quite sociable at parties. Colonel Reid also remarked on this fact. I said that I did not keep to my room through any desire on my part, that I had not had sufficient work, that as a result for long periods I sat in my chair with fingertips together, doing nothing, that I had from time to time complained of lack of work. When it was clear that there was no immediate prospect of my leaving my position voluntarily, Colonel Reid and you indicated that charges might be considered and you again pressed me to consider changing my position. Colonel Reid then read from some paper, apparently to impress me that there was a basis for charges. The investigation was apparently going on at that time. I said

that I would face charges rather than give up my job, that job was my life and my livelihood. Colonel Reid then said that we would both think matters over and have another discussion on Wednesday, July 9th. He thanked me for taking the matter calmly.

There was no discussion until July 14, one week later. Indeed, this was no discussion, no "thinking over", so far as you and Colonel Reid were concerned, for at that time there was lying on Colonel Reid's desk the statement of charges, neatly folded in an envelope, ready for delivery.

I had during the week thought the matter over and realized the danger in which I stood, innocent though I was. I interrupted the opening remarks of Colonel Reid at the meeting of July 14th by saying that if there had been anything in my conduct in the past of which he disapproved, I would remedy it, that if I had been too persistent in maintaining my position on legal matters I would no longer do so. Colonel Reid interrupted me and said that the situation had gotten beyond that, that matters had come to their attention which were serious and constituted cause for preferring charges, and he read to me, evidently from a carbon copy of the charges, the matters contained in Charge I (b). You will recall that when he read the part where I was accused of swearing at my stenographer, I asked whether I was accused of swearing at her or just swearing. He looked over the paper and said that he did not know. You will recall that when the charges were handed to me I implored you not to press these charges, that I was innocent, that I had heart disease and was then actually under treatment for progressive hypertrophic arthritis of the lumbar spine, which in the last year and a half had subjected me to periods of pain. You said that you had no alternative, that the charges were serious and that you had to take official notice of them. I protested my innocence and you said that if I were innocent there was no reason for me to be anxious over my condition. You said that I could resign and avoid trial on the charges.

The tone, tenor and substance of the conversation of July 14 was different from that of July 7, bad as that was. These serious matters, then, had come to your knowledge and the knowledge of Colonel Reid in the intervening time. It is thus clear that up to July 14 neither you nor Colonel Reid had known of these grave charges.

It is shocking beyond measure to learn that you and your legal advisor have already discounted my denial; have preferred to believe the alleged statements attributed to this girl of 19 against the denials of a member of the bar of almost 30 years standing, who has not been accused of dishonesty; lack of integrity or of prevarication; indeed, who is known to be a stickler for the truth and the facts and whose present predicament is due largely to too earnest an adherence to the ideals of profession. When I denied swearing, Colonel Reid raised his head and with a smile said in words or substance: "What puzzles me is this. Why should she say these things if they aren't true?" The answer to this rhetorical question should have been obvious to him, a lawyer. This girl was not under my domination and control when she made the statements attributed to her. Every motive of self-interest that from time immemorial has been recognized as tending to sway the testimony of a witness is here present, desire to keep her job, desire for advancement, financial interest, desire to ingratiate herself with the dominant power. If she made the alleged statement, how much pressure would be necessary to elicit it from this girl of 19. It would require but a feather's touch, nothing more than the knowledge that the investigator was seeking derogatory information. And does this statement of charges disclose that the investigator was scrupulous. If he has set forth charges that are incredible, would he refrain from applying the slight pressure needed to exact the right answer from this girl. I ask now for prompt assurance that this girl will not be approached and pressed to make further statements to fill in or explain the gaps and discrepancies that I have here disclosed.

The government does not require its officials to abandon their critical faculties when they sign a statement of charges. Indeed, a statement of charges is so serious in its consequences that it calls upon you to exercise meticulous care, to check the charges against your experience, knowledge of human nature and of the accused.

It is said that I have been critical and arrogant toward my co-workers, that when they have, in good faith, disagreed with me on some point of law I have called them "ignoramus" and "imbecile". Can I not have names and dates and fact? An attorney who has been called "ignoramus" or "imbecile" does not forget it. What self-respecting attorney would stand for such insulting and ignominious names without reporting it, indeed, without being roused to the point of visiting deserved physical chastisement upon me. "Imbecile" and "ignoramus" addressed to a self-respecting attorney are slanderous and fighting words. Yet I am accused of calling not one but all of my co-workers "ignoramus" and "imbecile", and not once, but often. Is this charge credible?

It is said that I have been arrogant. In what respect? When? What did I say to indicate this? Is this a charge? It is said that I have been critical. Is this a charge? I have been asked, unhappily, to give my views in matters on which my associates had previously expressed themselves. Too frequently my views necessarily called attention to facts and elementary principles that had either been overlooked or not given weight. How could I avoid criticism, when asked? This statement of charges, approved by the General Counsel, is illustrative, disclosing as it does a lack of knowledge of fundamental principles in the drafting of pleadings, indictments, accusations and charges, a lack of knowledge of the standards of fairness and justice that should govern an officer of our government in an inquiry of this kind, a failure to distinguish between matters of fact and subjective reactions, a failure to evaluate statements from the standpoint of credibility. Where there has been a lack of knowledge, comment would un-

avoidably expose this lack. And it is common knowledge that people resent a disclosure of ignorance. When asked for criticism, I gave it honestly, believing that the request was sincerely made. Upon this subject I shall have more to say at the proper time. But I am entitled to know in what respects I was critical, on what occasions, and what did I do or say that indicated criticism or arrogance so unbridled as to justify dismissal? An accusation of being critical in vacuo does not constitute a charge. May I have the facts and the occasions when I manifested this tendency?

Charge II. Improper Use of Government Office and Property, and Charge III. Improper Use of Government Personnel. At the proper time I shall prove, if given facts, that these charges are untrue. As the charges now stand I do not know what I am to meet. It is obvious that the occasional use of the telephone or of the stenographer for an occasional personal letter, which had been countenanced year in and year out, openly and with the knowledge of my superiors, does not justify charges. I was at no time carrying on a business, just building my own house under the G. I. Bill. Everybody knew it. I buttonholed everybody at F.N.M.A., would bore them with the details. Openly I made the few telephone calls necessary and kept my records in my desk, which was never locked. You went out to visit the house. You were given proof of the trivial use of the stenographer. In an endeavor to demonstrate to you that there was no substance to these charges, I showed you my correspondence file. This showed that even at the time I was building the house, my letters did not average more than one a week of approximately 10 lines. This did not, apparently, satisfy you. It is impossible for me to meet these issues, unless they are precisely stated so that I may know how much and what proof it is necessary for me to adduce to satisfy an impartial trier of the facts. How many telephone calls did I make and when? Indeed, it is customary to notify a person if he is making excessive use of the telephone so that he may cease the practice. Was I warned? What

use did I make of the files? How many files did I keep in my desk? Let us have facts.

It is said that this personal work delayed the official work of another lawyer who shared my office space. I shall meet this charge at the proper time. Is it conceivable that this lawyer would stand for any delay in his official work while my personal work was being done? He is held responsible for the completion of his assignments. Would he permit personal work to be done when he might incur blame for delay? Was I ever warned that there was such a situation? That I should cease this alleged excessive use of the stenographer?

These charges are summed up in the statement that the improper use of the stenographer required her to devote "practically, three-fourths of her time to your personal work, leaving only approximately one-fourth of her time for her government duties." Did you not doubt the truthfulness of this statement? You knew that my room was next to the room of the then Assistant General Counsel, that the door between was generally open and that he went in and out at will and unexpectedly. The General Counsel came in at times unannounced. By what miraculous or secret means could I conceal such an abuse? Would not the Assistant General Counsel and the General Counsel have to be blind to avoid notice of a situation where I absorbed six hours of the stenographer's time day in and day out, and all this time at a time when the Assistant General Counsel often came in and asked for her services? If I made such use of the stenographer daily, does it not indicate gross laxity and incompetence on the part of the General Counsel and the then Assistant General Counsel that would justify charges? If my attention was never called to any impropriety in my conduct, how am I to meet these allegations of impropriety, going back a year and a half?

Under *Charge No. IV*, it is said that I absented myself during working hours at least two or more hours "frequently" and "daily" without permission and without

submitting leave slips. Is it frequently or is it daily? Am I to answer with respect to frequently, daily, or both? If frequently, what constitutes frequently? Is it possible that for a period of six months I could daily take long absences without the Assistant General Counsel next door noticing it, without it being called to my attention? It is true that upon a number of occasions I have prolonged the lunch period. In desperation I would walk the streets, looking in the shop windows, to make the time pass. The reason for this was brought to your attention quite some months ago when you called me into your office and asked me if I would take a job on the administrative side. I said that I was a lawyer and liked the law. You then pointed out that I was not kept very busy. You will recollect that I commented on the situation that, although I was not very busy, at that very time another lawyer was being hired and there was talk of still another, but you told me that the second one would not come on. Indeed, shortly after I was transferred to F.N.M.A. a lawyer was hired and neither he nor I were kept busy at long intervals. It appears that I have been indiscreet enough to mention the situation. From time to time I would ask the Assistant General Counsel and the General Counsel for work. Shall I be discharged because I repeatedly asked for more work, because I desired to earn my salary, because I was indiscreet in opening my mouth with respect to this situation?

Charge V. is entitled "*Refusal to Respect the Authority of Superiors.*" It is said that during the period between April, 1951 and April, 1952, I was frequently resentful of the authority of my immediate superior to the point of insubordination. Am I charged with resentment or insubordination? What does "to the point of insubordination" mean? What was this resentment? What were the indications of it? It is said that I adopted an argumentative attitude when my superiors disagreed with a conclusion I had reached, and plainly showed and expressed resentment to any suggestions for change or further research. What did I do or say that showed or expressed

resentment? What is an argumentative attitude on the part of a lawyer? When does an argument between lawyers, ironing out a point of law, become insubordination? What is there tangible and concrete in this that I can meet? It is said that upon one occasion I was unwilling to make a change and the Assistant General Counsel was forced to order me to make such change. When did this happen? It may well be that I can explain if given facts that will recall the specific matter. An attorney is responsible for his opinions. He may refuse to take responsibility for a change, and even require a direct order, to relieve him of responsibility. It is said that on another occasion when the Assistant General Counsel suggested a change, I informed him that if he did not like the way I had prepared the letter he could change it himself or get someone else to do so. What was the letter and the suggested change? Surely the facts are available. An attorney, if he feels that he cannot honestly make the change desired, may ask his superior to take it upon himself to make the change or to get some other lawyer to do so. In this connection, at the proper time, I shall show that I have changed my opinions, even to the point of self-stultification. In fact they have all been changed, without exception. The statements in Charge V. do not constitute a charge. If I have at times shown reluctance to make a change or approve an opinion, this statement of charges supplies the reason. Could a conscientious attorney approve it? At any rate let me be given some facts that will enable me to produce available evidence in my records to defend myself, to explain. Shall I be limited to a general denial, which has already been discounted?

These charges are, in truth, a compliment to the character and the integrity of the accused. Your investigator searched high and low to ferret out anything and everything derogatory. And what was he able to put into the statement of charges? Adjectives, accusations destitute of facts, which bear evidence of falsity on their face, alleged incidents of gravely insulting remarks which would have caused immediate complaint but which were dis-

covered by an investigator bent on finding them. The investigator found frequent and daily absences, of which no record was ever made, daily use of the stenographer for three-fourths of her time under the very eyes of the Assistant General Counsel and within the observation of the General Counsel. This is indeed an unique proceeding. Charges are customarily the result of complaints made and warnings given, unless the offense is criminal or indicates moral obliquity, but in this case an investigation has been made without complaints. What prompted such an investigation? What objective was in the mind of its proponents?

These charges are but pretexts. It is evident that you did not examine them critically, that you did not check them against the facts known to you or available to you. It is clear that the drafter of these charges drew them with the knowledge that they do not have to be proved, that they will not be submitted to the test of cross-examination; with the knowledge that the accused bears the burden of disproving them and would be limited to general denials upon which he could quickly be found guilty. The statute in question is designed to protect veterans. But if generalities satisfy the statute, a premium is placed on exaggeration and falsity. The greater the falsity, the greater the burden on the accused and the less chance he has to vindicate himself. It is easy to state generalities, hard to invent a connected series of facts constituting any of the incidents mentioned in the statement of charges.

I respectfully request that I be served with a statement of charges setting forth facts that will apprise me of the issues I am to meet and that will enable me to defend myself.

2. I respectfully ask that this matter be referred to the Civil Service Commission for the appointment of an impartial trier of the facts; that you disqualify yourself from sitting in judgment at the hearing of the charges. You will recollect that at the meeting of July 14th I addressed

Colonel Reid and asked who would preside at the hearing. He said "Mr. Baughman".

This would indeed be the last act of this travesty on justice. You ordered or approved an investigation when the matters set forth in the statement of charges had never been the subject of complaint or warning. For what purpose, if not to form the basis for charges that would force me out of my job? You took an active part in the discussions of July 7 and July 14 when I made my denials and produced evidence of the untruthfulness of some of the charges. If you did not believe those denials then, you will not believe them at the trial. In signing this statement of charges you showed a ready willingness to sign charges which on their face are incredible. You gave me the alternative of resignation to escape trial. It is the prosecutor who, being convinced of the guilt of the accused, offers the accused the chance to take a lesser plea. Every single act of yours has been an act of ready willingness to believe in the guilt of a lawyer of almost 30 years standing at the bar. When your Chief Legal Advisor asked me the rhetorical question why this girl would make the alleged statements if they weren't true, you make no objection to the assumption of guilt, to the unfairness of placing upon me the burden of explaining the mental reactions and reasonings of a girl of 19 while under the control of your investigator. Indeed, there is no element of justice in this proceeding in which you have taken an active part. There are matters in issue in which you are an interested party.

My safety lies in obtaining an impartial and experienced judge, one who can distinguish fact from fiction. Under the forms of law, violence is being done to every concept of American justice. There has been no impartial investigation looking to the disclosure of facts. A sober and matter-of-fact statement of charges is conspicuous by its absence.

I have earned the right to this job, earned it in the mud of Flanders fields, in the bitter cold of the English

Channel in 1917-18, when at the age of 18 I volunteered, earned it in ministering to the wounded and dying, 36 hours at a stretch, while the bombs were dropping and killing my comrades, earned it in the broiling sun of the Mojave Desert in the second World War, earned it with disabilities incurred, earned it with four years of my life spent for my country, earned it with pain, and suffering and tears. And now that I need this job for my very life and livelihood I shall fight tooth and nail to expose this shocking proceeding. My safety, my vindication depend upon my dragging this thing into the open. There will be no hearing in a small room where only you, your Counsel and I are present and judgment is quickly pronounced.

I must confess that when these charges were handed to me I was in fear and agony. I implored you to withdraw them, telling you that I had heart disease and progressive hypertrophic arthritis of the lumbar spine, that I was undergoing treatment at the Veterans Administration which you could verify. You gave me the answer that if I were innocent there was no reason for me to worry. Does not an innocent man have cause to worry when caught in a trap? The charges were serious, you said. These impossible, false charges! I was like a hunted animal, looking for some avenue of escape. If only I could get an impartial judge, I thought, and I turned to Colonel Reid and asked who would preside at the hearing, and received the expected but feared answer: "Mr. Baughman". It was of course a necessary part of the design. The last avenue of escape, it seemed to me, had been shut. But I have found a way out. This thing cannot happen in our country, not while there are good people who resent mean actions and evil designs, not while our courts mete out justice. Thank God, thank God, for our courts.

I have taken pains to demonstrate, item by item, that these charges bear evidence on their face of falsity, that some of them in fact do not constitute charges. You cannot now claim that you acted in good faith without knowledge. I shall hold you strictly accountable for every penny

I spend in my defense, for the pain and agony to which you have subjected me, for any untoward consequences of this ordeal.

I respectfully ask:

(1) That a new statement of charges be served upon me, which shall apprise me of the facts and issues, so that I may be able to defend myself.

(2) That such charges exclude matters of such nature as are given consideration in or are covered by efficiency ratings I have received.

(3) That you disqualify yourself from sitting in judgment in this matter and that it be referred to the Civil Service Commission to appoint a competent and experienced trier of the facts and issues.

(4) That, in view of the fact that the material charges bear evidence of their falsity, your investigator be ordered to cease absolutely further interrogations except in the presence of my attornies. [*sic.*]

(5) That I be notified on or before 12 o'clock noon of July 25, 1952 of your decision in these matters, as I must make application to the Courts prior to the expiration of my time to answer, for appropriate relief.

Yours very truly,

(signed) A. Lincoln Green,
A. Lincoln Green

A Certified True Copy:
P. J. Sadoti
P. J. Sadoti
Acting for Harrison E. Meyer
MLG/j Personnel Officer

DISTRICT OF COLUMBIA ss:

A. Lincoln Green, being duly sworn, deposes and says that he is the individual who signed his name to the foregoing letter and that the statements of fact set forth in said letter are true.

(signed) A. LINCOLN GREEN

Subscribed and Sworn to before me this 24th day of July, 1952.

(signed) RALPH R. SACHS

Notary Public, D. C. My Commission Expires, June 11, 1956.

Letter from Baughman to Green, July 29, 1952

FEDERAL NATIONAL MORTGAGE ASSOCIATION
WASHINGTON, D. C.

July 29, 1952

Mr. A. Lincoln Green
Federal National Mortgage Association
Room 857 Lafayette Building
811 Vermont Avenue, N. W.
Washington, D. C.

Dear Mr. Green:

This will knowledge receipt today by me of your letter dated July 23, 1952.

I have carefully read and considered your letter, and will reply specifically to the requests set forth on page 17 thereof, as follows:

(1) I am of the opinion that the statement of charges is sufficiently and specifically detailed to apprise you of the facts and issues so that you should be enabled to defend yourself.

(2) The charges do not include matters of such nature as were given consideration in or were covered by any efficiency rating you may have received.

(3) Your request that I disqualify myself in this case is without justification; I propose to consider the case fairly

and conscientiously, and at the proper time to make such recommendations in the premises to the Chairman of the Board of Federal National Mortgage Association as I then deem appropriate.

(4) I find no indication that the material charges bear evidence of their falsity, nor am I aware of any reason why further investigation may not be conducted, if desired.

Very truly yours,

(Signed) J. S. Baughman
J. S. Baughman
President

A Certified True Copy:
P. J. Saboti
P. J. Sadoti
Acting for Harrison E. Meyer
Personnel Officer

RNReid:emk

I certify that the original letter, of which the foregoing is a true copy, was delivered by me personally to Mr. A. Lincoln Green, this July 29, 1952, at 12:14 P.M., EDT.

(Signed) J. Arthur Woon

Green's Affidavit in Answer to Charges, Sept. 9, 1952

District of Columbia, ss.:

A. Lincoln Green, being duly sworn, deposes and says:

He submits this affidavit in answer to the charges dated July 14, 1952. Deponent's letter of July 23, 1952, is made part of this affidavit as if set forth herein in full. The defects in the charges, the objections and the requests for facts and other relief, set forth in said letter of July 23, 1952, are not waived by this answer.

Deponent was admitted to the Bar of New York in 1924 after serving a year's clerkship and practiced law in that state until September, 1942, when he entered the army. Because of disabilities he was unable to return to active practice in New York City. Deponent is a member of the

Association of the Bar of the City of New York, the Foreign Policy Association, the American Academy of Political Science, the American Society of International Law, and the Disabled American Veterans. He was Assistant Counsel to the Ambulance-Chasing Investigation in New York, Technical Advisor to the New York Constitutional Convention Committee and wrote that part of its publications entitled "The Pardoning Powers of the Governor". He is the author of an article on the Treaty-making Power of the United States with respect to Labor.

Deponent graduated from Harvard College and the Harvard Law School. In his freshman year in 1917, when the United States declared war, he left the Reserve Officers' Training Corps and enlisted as a private with the unit that was the first to leave for France and the first to sustain casualties and fatalities under enemy fire.

In the Second World War he served on one of the Draft Boards, was commissioned Captain in September, 1942, and went to the School of Military Government at Charlottesville, Virginia. He sustained injuries on maneuvers in the desert of California and was retired for disabilities incurred in line of duty. He is suffering from hypertrophic arthritis of the lumbar spine, progressive, and from heart disease. Since June 2, 1952, he has been under medical treatment at the Veterans Administration for the former ailment.

Just before deponent left for hospitalization and eventual retirement, deponent's Commanding Officer left the following letter on his desk, given without solicitation:

"ARMY SERVICE FORCES
SAN FRANCISCO PORT OF EMBARKATION
FORT MASON, CALIFORNIA

In Reply Refer To:

19 July 1944

To Whom It May Concern:

Captain A. Lincoln Green has been a member of my staff for the past five or six months. During that

time, I have had opportunities to make a thorough appraisal of his ability. I have found him a careful, studious lawyer with a comprehensive grasp of his profession and a keen zeal for careful research and study. He is mature and his judgment is excellent. If I had an office in civil life, I would be delighted to have him associated with me. From my observation, I believe that he has a good knowledge of Corporation, Real Estate and Admiralty Law. I shall be glad to answer any communications regarding Captain Green.

(signed) A. N. ZIEGLER
A. N. Ziegler,
Colonel, J.A.G.D.,
Staff Judge Advocate."

Deponent has received an EXCELLENT efficiency rating, except for one year, when he received VERY GOOD in a new position which he had occupied for only a few months, and except last year, when he received SATISFACTORY under the new law and regulations governing such ratings.

This action is probably unique in the history of such removal proceedings. It was commenced without warning of any act of impropriety or misconduct. Never was deponent told that his behavior was in the least improper, that he must mend his ways. Never was he told that he was making an excessive or improper use of government facilities and that he should cease the practice. Never had he been warned that he had absented himself without leave. Never had he been told that the work of another attorney had been delayed because of his personal work. Never was he told that an attorney had complained that deponent had called him "ignoramus" and "imbecile". Never had he been told that his stenographer had complained of insults, discourtesy, or rudeness, or of the quoted statements in the charges. Never had he been warned that his legal opinions had not pleased his superiors, that his disagreements with the views of his superiors could or would

be considered ground for dismissal, that his reluctance to change his opinions could or would constitute insubordination. In short, not one of the charges was ever made the subject of complaint or warning. Yet, deponent worked, one might say, in a fishbowl next to the Assistant General Counsel, with the door between generally open. He never locked his desk. His file of personal correspondence was kept in the filing cabinet with official correspondence, for convenience. He hid nothing. He dictated his few personal letters openly, which he had done since joining the government service. If he had been told that it was improper, he would have ceased the practice immediately. He built his house under the G.I. Bill. Everyone in FNMA knew of it and was interested. He would carry the papers in a portfolio to the office from his home and back. Everyone knew what the portfolio contained. Deponent carried on no business for profit.

The charges are based solely on recollection of events past. It is not surprising, therefore, to find that they are almost completely lacking in facts. Not the slightest attempt is made to give details that will refresh deponent's recollection.

The charges take in the entire scope of deponent's activities in his employment for more than a year and a half. This affidavit is consequently long. Deponent cannot meet generalities with generalities. Generalities are allowable, it would seem, only to the proponents of these charges.

With respect to Charge 1(a), bare accusations of rudeness, discourtesy and abusive language without any statement or any attempt to place these matters in context are not charges. Persons may differ as to whether an act of deponent was rude or whether his language was abusive.

Deponent does recollect an incident in February, 1951, which resulted in complaint by his then stenographer and her reassignment. When deponent pressed the buzzer, the stenographer had long been in the habit of entering the room without her stenographic book. The lady had had

many years' experience as a stenographer. Deponent said nothing for a time, hoping that she would come to realize the futility of having to retrace her steps and of deponent's repeatedly asking her to get her book. Then he asked her if she would be good enough to bring her book with her when he buzzed. But she soon lapsed into her former habit. He asked again and she remembered for a few days. When she came in without her book again, he said to her: "I don't want to have to tell you again to bring your book with you when I buzz". Some time later in the day, when deponent had occasion to see the General Counsel on a matter, he told General Counsel of the incident. General Counsel said to deponent: "That is substantially what Miss Smith told me". Deponent then learned that she had asked for a reassignment. Attached hereto and incorporated herein as EXHIBIT A is the affidavit of this stenographer. It corroborates deponent in all respects. The incidents mentioned in the affidavit do not constitute discourtesy or rudeness. Deponent used no abusive language. Deponent was not warned by General Counsel and as a result no occasion arose for and deponent did not say that there would be no repetition of such conduct.

General Counsel at the conference of July 14, 1952, read this charge. Deponent looked at General Counsel and said: "Bob, did you warn me?" General Counsel leaned back in his chair, keeping his eyes on the paper, and said: "I thought I had". In authorizing and approving a statement that deponent had used abusive language, General Counsel was authorizing and approving a falsehood known to him to be false. Deponent had not used abusive language, and General Counsel knew it.

We come next to Charge 1(b). These accusations are serious and grave in the mind of General Counsel; for at the meeting of July 14th, when deponent, ill and under medical care, told General Counsel in substance that he would henceforth have no views that differed from the views of General Counsel, General Counsel immediately let deponent know that it was too late. The decision had been

made. The grave matters in Charge 1(b) had come to their attention. It was in connection with this charge that General Counsel said: "What puzzles me is this: why should she say these things if they aren't true?" General Counsel is ingenuous. In the latter part of June, deponent's stenographer was taken from him under the pretext that General Counsel needed her temporarily. She then came under the direct authority and influence of General Counsel and his willing assistant, and a signed statement was extracted from her. Her original resolve was not to sign a statement, as deponent will show. How had this resolve been broken down?

The accusations in Charge 1(b) would attempt to show deponent to be a person temperamentally unfit to work in government, inconsiderate and mean. Attached hereto and incorporated herein as EXHIBIT B is the affidavit of Frances Drwal, who was deponent's stenographer for four years, from 1945 to 1949, and who left deponent for a non-legal position in RFC as a result of a reduction in force. When she first worked for deponent, she openly expressed her lack of confidence in her ability to fulfill the requirements of the position. While she had learned stenography and typing, she had not practiced them. She had been a file clerk. Deponent instilled confidence in her, encouraged her and taught her. This required patience, consideration, and kindness—qualities which are lacking in deponent according to the charges. There is also attached hereto and incorporated herein as EXHIBIT C the affidavit of Charlotte Ryan, who was in the same office for two years and had an opportunity to observe deponent. Miss Ryan's immediate response when deponent told her that he was in need of her affidavit to prove that he was habitually courteous and not rude or abusive was: "Why, Mr. Green, I couldn't do otherwise". Deponent has no influence over these ladies, unless it is the influence of friendship based on kindness and consideration. But if the charges are to be believed, deponent's nature is such that he could never acquire such influence. The President, Mr. Baughman, has had opportunity to observe deponent's conduct both at

's home and at the office. Has he ever noted any lack of courtesy, any use of abusive language? Or does he believe that, when he sits in judgment, he must discard all knowledge of deponent?

Charge 1(b) accuses deponent of an attitude which, in the mind of the draftsman, is synonymous with "conduct" — something new in definition and not found in Webster's. Deponent has had to correct similar errors of the draftsman. Laxity in language, grammatical errors, inexactness are his characteristic traits and abound not only in this statement of charges but in the work that he has done. It is but necessary to examine the work. This is the man entrusted with drafting a document requiring careful preparation and accurate statements.

Deponent, in the first sentence of the charge, is accused of a string of adjectives. "His attitude toward the second stenographer was distasteful and unpleasant, insulting, rude, harsh and abrupt". Is deponent seriously expected to answer such childish name-calling: "distasteful", "unpleasant"? Is the latter something different from "distasteful"? "Abrupt"—Does that justify dismissal, even if true? These words express subjective emotional reactions. They are not objective facts. "Deponent frequently lost his temper."—What is "frequently"? Deponent, enraged, threw a small telephone book toward her. This book is the interoffice telephone directory, a pamphlet of a few pages with paper covers. Under the hands of the draftsman, it has grown into "a book". "Depenent threw papers to the floor at one time". How is this, even if true, improper conduct toward office personnel?

Then come a series of quotations attributed to deponent. The quotations are detached from their context and setting. The alleged words attributed to deponent are exactly remembered but not a single fact that gave rise to the words. Falsehoods of this type are usually disclosed on cross-examination. It is difficult to invent a connected, logical story of which the quotation is a part. But there is

reason to believe that the young lady will not be available for examination if this case reaches the Civil Service Commission. Deponent ventures to predict right now that she will soon leave the employ of FNMA.

Some of the quotations are absurd on their face. No person in government service would think of saying to a government stenographer: "You come over here and you come fast". She just would tell him to go fly a kite; and the stenographer in question, who is the very opposite of a shrinking violet, would in all probability have given him a tongue-lashing that he would remember to his last day. It would, indeed, bring on a laugh, if this girl on the stand tried to act the part of a meek and retiring young lady who can be insulted and pushed around without uttering a word of protest. Indeed, when her father read these charges, he said to deponent; "That's not my daughter. She wouldn't stand for that for a single minute".

The quotations in question are deemed serious enough to warrant dismissal, yet were not serious enough to warrant complaint. She never complained. Indeed, she remained with deponent for a year and a half. It is common knowledge that a government stenographer need not stand for insults and abuse a single day. There are too many jobs open to her.

When one considers the character and traits of this girl, these charges become absurd. She had a strong, domineering will. Being highly opinionated, she accepted even constructive criticism with bad grace. Having reached the mature age of 19, she had pronounced opinions on every phase of the duties of a secretary, as well as on the problems of life. Except for stenography and typing, in which she was superior to most government stenographers with more experience, she knew little. Yet it was difficult to tell her anything. Deponent approached the problem of asking her to change her methods or routine with hesitation. It was a problem in diplomacy.

It was difficult to keep her in the room when there was no immediate work. The result was that she was absent

when deponent needed her. Her attention had to be called to these absences. She was on the 'phone for long periods of time, advising her parents on how to handle their problems. This was amusing but could become a nuisance. Her attention had to be called to it.

Soon after deponent was placed in the same room with the other attorney, the latter said to deponent: "Abe, I think you ought to be careful as to what you say in her presence. She has been talking to me about you". Deponent smiled and indicated no surprise. Deponent had been the unwitting recipient of gossip concerning some of the attorneys, and he did not think that her habit excepted him. She had no feeling of friendship or loyalty, no matter how much deponent put himself out to cultivate them. When the weather was warm, deponent on occasions sent out for coca-cola or ice cream, sometimes for the other girls. At Christmas and Easter he would give her a small gift, once a cigarette lighter, at other times a box of candy. Deponent granted every desire and wish that she expressed. She would go down for coffee every day in the morning. But she resented having to ask. She would frequently ask to leave a few minutes early, especially when she had nothing to do. But if she had a luncheon engagement and she had to stay five minutes late to complete a piece of work, she would never do so, and deponent never asked her, knowing her reaction. But once, she wanted to leave a matter in her machine which could be completed in five minutes, although she still had fifteen minutes before her luncheon period commenced. Deponent pointed this out to her. She completed the work, obviously displeased.

She never indicated any gratitude for deponent's consulting her wishes and desires. The most that deponent could hope was that she would stay in her position as long as she felt it was to her advantage, as long as she could get something out of it that she could not get elsewhere; and deponent tried to make it advantageous for her to stay. Soon after she had assumed her position, she in-

formed deponent that she had the offer of a position at a higher salary outside government. Deponent and Assistant General Counsel talked to her for an hour and a half, pointing out certain advantages and benefits of government employ that might more than compensate for the higher salary. She was persuaded to stay.

Deponent's habitual manner of address, when asking a stenographer to do something, is: "would you please". When the other attorney occupied the same room, he would inquire whether she had any work on her book before dictating. This was because she had a disinclination to take dictation until she had typed the work already on her book. It was thus necessary to ask her whether she had any work in her book even before dictating a short letter or to explain apologetically that it was only a short letter. In short, deponent was considerate to her, refrained from displeasing her, granted her desires and wishes to make her happy in her position and to retain her. Stenographers were in demand and in truth they sat in the driver's seat. The very last thing that deponent would do would be to commit the acts of which deponent is accused; for they would have caused her to leave immediately. Incidentally (and this is not unrelated to the question of deponent's relationship with the secretarial help), she would frequently take dictation, smoking a cigarette. Deponent said nothing for fear of offending.

There came a time, in February or March, however, when her conduct was unbearable. She no longer asked to go out for coffee. She was frequently absent when wanted. When she completed a piece of work, she would not place it on deponent's desk. She would turn around in her chair and from her sitting posture reach out and thrust or pitch it from her so that it landed on deponent's desk. At this time she decided that she would remain at her desk in taking dictation, just turning her chair sideways toward deponent. Deponent asked her to take the chair beside his desk. She said that she preferred to be seated in her own chair, that she was more comfortable. Deponent

replied that he preferred that she be seated beside his desk. She acceded, with bad grace. Deponent compared notes with the other attorney and then spoke to the Assistant General Counsel about the situation. But shortly thereafter she told deponent to get a telephone number himself, which he had asked her to look up in the inter-office directory. Deponent then determined that it was his job to correct her, that he could not pass the job on to anyone else. In the absence of the other attorney he asked her to be seated at his desk and went over the matter with her. He said: "It is not courteous to ask me to look up a telephone number when I ask you". She admitted that she had acted discourteously and, after stating that there would be no recurrence, said: "Will everything be as before?" Mark the words, those who say that deponent made this girl unhappy, that he swore at her, abused her and made her life miserable. Mark the words, "Will everything be as before"? No man in FNMA, including the President, has ever found deponent to be anything but truthful. How can one reconcile these present charges with her words, "Will everything be as before"?

That is not all. She had the opportunity to leave deponent and join another agency at a higher salary only a couple of months before she is said to have threatened to resign because of deponent's conduct. This is a matter of record. Deponent recommended her for the same grade. She was willing to stay with deponent if she obtained the same salary. She was promoted on deponent's recommendation and the recommendation of the other attorney. But if deponent insulted and humiliated her, then reason and logic tell us that she would have taken the other position, and that right quickly. There would have been no dickering for an equivalent raise. Can the proponents reconcile this fact with the charge that she threatened to resign? Well, they can't; for this is another of the outright falsehoods sponsored by General Counsel and drafted by his willing assistant. She did not threaten to resign. The facts are as follows: On a Friday in the latter part of June, the present Assistant General Counsel

called deponent into his office and told deponent that General Counsel had a backlog of work and needed the services of deponent's stenographer *temporarily*. Deponent pointed out that there was considerable legislation to be filed, which the stenographer had been doing. Assistant General Counsel told deponent that he would have to do it himself while she was working for General Counsel. On the following Monday, deponent arrived early, which he frequently does. The stenographer had already arrived but was not in the room. When she came in, deponent said: "You are to work temporarily for Col. Reid". She said: "Yes, I know. Col. Reid told me". Deponent was curious to learn her reaction to this arrangement. He had put himself out to make the job desirable to her. He did not expect any show of gratitude, but there was the possibility. Being human, deponent would have been pleased. He was curious to know how she would like the change. So he asked: "What did you say to Col. Reid?". She said: "I didn't say anything, just sat there saying nothing". Deponent then said: "Is that all?", and she said: "Col. Reid said: 'You don't look very happy. It will be only temporary.'" There was some satisfaction in this, although deponent knew that unhappiness was exclusively over the possibility of the loss of the privileges and of the freedom she had had with deponent. She was unhappy at the change. Contrast this fact with the charge that she threatened to resign unless she was reassigned. Either deponent or the draftsman is not telling the truth, and deponent will show in black and white that this draftsman has been guilty of outright falsehood in this and other instances.

In connection with this charge, there is annexed hereto and incorporated herein as EXHIBIT D a proposed affidavit, written in deponent's handwriting, to be sworn to by the present Assistant General Counsel. On the morning of August 29th, deponent entered the latter's room and, after the customary amenities, the following conversation occurred.

Green: Arthur, I have something for you to look at.

(Deponent placed before him the proposed affidavit stating that Assistant General Counsel had told deponent that the stenographer was to work for General Counsel temporarily, that deponent had not called him "ignoramus" or "imbecile". Mr. Wood read it.)

Wood: I won't sign it.

Green: Why, Arthur? Aren't the facts stated the truth?

Wood: That is not the question. I am in a precarious position in this.

Green: You mean "embarassing", I suppose. I appreciate that.

Wood: I don't want to be involved. You wouldn't sign it if you were in my place.

Green: I think you're wrong there, Arthur. If those were the facts, I would sign it. I suppose that is my nature, or I wouldn't be in this trouble today."

Deponent did not get the affidavit. It is with reluctance that deponent sets forth this conversation. Mr. Wood is very likable. He and deponent have gotten along without personal differences, though differing at times in their views on the law. But there is a duty to speak the truth, embarrassing and difficult though it may be.

It was with respect to this charge that General Counsel said to deponent that he could not see how the stenographer could say these things if they were not true. Thus, the initial assumption is that she spoke truth and deponent is placed in the position of overcoming this assumption. And, continuing in the same vein, General Counsel asks deponent whether it is not possible that she had said these things but that deponent had forgotten. Deponent asked whether General Counsel had ever known deponent's memory to be faulty. But consider the appalling demonstration of ignorance of law, reason, logic and ethics in all this. General Counsel has accepted her veracity. He has assumed that she is a disinterested witness when every neophyte in the law knows that she is an interested witness.

And if ever there was an interested witness, she is it. She was detached from deponent and then came under the direct influence and authority of General Counsel and his assistant, who represent the power and authority of the government, her employer. She is young and her character not yet developed. She has no permanent position or status. She is interested in improving her financial position, in promotion. She plans to be married in the next few months and her fiancé has just entered into a new employment in which he is not yet established. How much pressure would it require for the proponents to extract the desired statement from this girl of nineteen? Will people who resort to falsehoods to attain their objectives refrain from exercising that pressure?

Consider the ready willingness of General Counsel to accept the statements of this unformed girl against the denials of a member of the Bar of many years' standing, with a record of disinterested service, whose integrity and character have never been impugned—at least not until this proceeding was instigated.

Consider the ethics of those who instigated an investigation without complaint and asked this girl in a position of trust and loyalty to turn informer. If these tactics are countenanced, no employee can feel secure. No decent person will work in an atmosphere of suspicion and distrust. If it becomes known that this practice has introduced itself into government, that it is an accepted instrument of government surveillance, it will become even more difficult to obtain and retain competent men. The ranks will be filled with the kind of man who is not filled with loathing and even horror at the very thought of such practices.

Up to August 26, 1952, deponent did not know that the stenographer had signed a statement. He recognized the possibility, but it seemed to him improbable, considering the almost obvious falsity of many of the accusations. On that date he went to the mother of the girl at the store where she works, and the following conversation occurred:

Q. Mrs. Cahn, you must have heard from Elaine of my trouble.

A. Yes, she has told me about it.

Q. If I am dismissed, I will not be able to get another job. In my condition the job means life to me. I want to get her affidavit of the facts. I don't want to approach her at the office. Besides, I am afraid that she will be reluctant, thinking that her job is at stake. She can obtain a half dozen jobs if she is forced to leave this one. But with me it is different. Will you not ask her to give me an affidavit of the facts?

A. Mr. Green, I appreciate your position, but I have no influence over her at all. She has told me that she would sign nothing for anyone, but that, if she were asked to sign a statement, she would leave her position.

Q. Do you think her father could talk to her?

A. Well, she listens to him a little more than she listens to me. You can try.

She gave deponent the address of the other store, and deponent took a taxi and arrived there in a few minutes. After explaining his mission, the following conversation occurred:

Q. Won't you help me get an affidavit of the facts?

A. It won't do the least bit of good, believe me. She has done a number of things that her mother and I don't like. She won't listen to us at all. I had her a week in this store and I was glad she left. She told us that she would give no statement and that she would even give up her position if anyone asked her for one. We can't do a thing with her.

Q. Is she coming here after work?

A. I believe she is going home.

Q. Suppose I call at your home tonight. You and I might be able to persuade her.

A. I would like you to visit my home socially but not on this matter. It won't do any good, and it would just aggravate things. My wife has asthma.

Q. Just read these charges. You'll see yourself that there's no truth in them.—

(He read the charge.)

A. That's not my daughter. She wouldn't stand for that for a single minute. You know she was employed by a Mr. Johnson and left him because he was rude and swore at her once.—

(He came to the part where deponent is alleged to have thrown a book toward her twice.)

A. —You know, if you ever did that, she might pick up the book and throw it at you.

Q. That's what I said when I read it. Won't you help me? Why don't you call her ~~to the 'phone~~ now and talk to her?

He called her and asked her to call him back on an outside wire. She did; and he said to her: "I have Mr. Green with me. He wants to get your affidavit on those charges. "* * * You did? You might have come to me first". * * * "Here, Mr. Green wants to speak to you."—I took the 'phone.

Q. Elaine, you know about those charges?

A. Yes, I signed them.

Q. Just a moment, Elaine, you don't mean you signed a statement with respect to these charges?

A. Yes, I did.

Q. Let me read them to you.—It says here that I said to you: "You come over here and you come fast". —Did I say that to you?

A. Yes, you did.

Q. It says that I called my co-workers "imbecile" and "ignoramus".—Did you ever hear me call anyone "ignoramus" and "imbecile"?

A. Yes, you called Mr. Gordon "imbecile". Don't you remember?

Q. I said: "That's an imbecilic argument"—don't you remember that?

A. No, I don't.

Q. Did I ever say to you: "God damn it to hell. Why don't you do things right?"

A. Yes, you did.

Q. All right, Elaine. That's all.

Deponent then turned to Mr. Cahn and said: "Well, that's that. I thought you said that you knew your daughter."—Deponent shook hands and departed.

Specifically, deponent's conduct to the stenographer was not insulting, rude or discourteous. The affidavits of his first stenographer and of the stenographer he had for four years and of Miss Ryan show that deponent was habitually courteous. When her actions did not please deponent, deponent gave her no opportunity to displease him further. He limited his conversation to what was necessary. Deponent has no doubt that his increasing unpopularity with the powers affected her relations with deponent. There was no profit or advantage in being nice to deponent. One of the remarkable things about this girl was her feeling for the practical, for what was advantageous to herself, developed far beyond her years. Practically every action of hers could be accounted for on that basis. Deponent may have been short and abrupt with her on occasions. It was the only way that he could show that her conduct displeased him without open reproof, which he wanted to avoid. Deponent did not lose his temper with her, although he had occasions to do so. It would have given her the advantage she may have sought if he had done so. Deponent never threw a small telephone book toward her, never threw anything toward her, except an occasional glance. Papers did fall to the floor once. Deponent held them in his hand, about to call the stenographer for dictation. She was looking at deponent at the time. She is assigned, by the way, to deponent to be his assistant and helper in stenographic matters, which seems to be completely overlooked in these charges. There is a background to the incident. The attorney had used the stenographer the day before. In the period when this attorney was with deponent,

deponent was obliged at times to write short memoranda in longhand. The Attorney was, as he himself once said, "an eager beaver", and, to put it bluntly, inconsiderate where the use of the stenographer was concerned. On one occasion when he had occupied the stenographer for two days, he informed deponent that deponent could use her the next day. When the next day came and she was still occupied with him, deponent said to him: "I thought you said that I would have the use of Miss Cahn today". He laughed it off. Upon the occasion in question, deponent tossed the papers onto the desk and said: "Milton, don't you ever ask whether I may not want to use her?". The papers fell to the ground. In what way is this "improper conduct toward office personnel"? It is evident throughout these charges that a special standard has been set up for the sole benefit of deponent. If the same standard were applied to all other employees, General Counsel and his staff would be very busy with charges. Deponent never knocked on his desk and said, "do this" or "take this". This does not make sense. Deponent never yelled at her and said if she didn't like the way things were done in his office, she knew what she could do. She might have taken deponent up in a flash; and as the facts related herein prove, it was the very thing deponent was trying to avoid. It was in order to keep her that deponent had recommended her for promotion. Deponent never said to her "God damn it to hell, why can't you do things right?". There was an occasion when she informed deponent that he had received a telephone call but that she had forgotten to ask the name of the person calling. She told deponent of it. Some time before, deponent had told her to obtain the name of the person calling. This she should have learned without being told. Deponent said nothing. It may be that she attributed to deponent her own reaction in the same circumstances. She was far from Victorian. On occasions, when she said "damn" or "hell", deponent would humorously say "you're teaching me bad language". And on one occasion, when she made an error, she stood up from her typewriter and said "God damn it". Deponent

is no purist. But defenseless girls are not the object of his swearing.

This concludes deponent's defense of this portion of the charge. The charge is baseless *in toto*. In ordinary circumstances it would never have been necessary for deponent to accumulate so much evidence to demonstrate the impossibility and falsity of this charge. The denials of an attorney of many years' standing at the Bar would suffice against the bare accusations of a girl of nineteen, especially in the absence of complaint made at the time when the alleged misconduct occurred.

It is said that deponent was "critical and arrogant". But upon scrutiny it appears that the indubitable indicia of arrogance and of the critical spirit are the words "ignoramus" and "imbecile". The arrogance and critical spirit consisted in calling his co-workers "ignoramus" or "imbecile".

Nevertheless, this is an extremely serious charge. These co-workers are members of the Bar. The words are slanderous, reflecting on the professional ability and reputation of attorneys. The gravity of the charge called for exact and precise statements. The facts were available to the proponents. Attorneys do not forget such terms, applied to them. Who are the attorneys?

On how many occasions, in what circumstances, were they called by deponent "ignoramus" and "imbecile"? Did they complain? It is common knowledge that no attorney would stand for such terms without complaining, without even visiting physical punishment upon the utterer.

How can a person in deponent's position prove his innocence of such factless charges beyond a general denial? In ordinary circumstances, deponent would not even be called upon to make a denial of such an incredible accusation, destitute of facts. But this is no ordinary case, as the readers of this affidavit may already suspect.

On September 2nd, deponent asked the secretary to the former Assistant General Counsel whether she had ever heard him use these terms. She sat next to the door of deponent's room, and this door was usually open. She said that she had not heard him use the terms, although she was not always listening and was not always at her desk. Deponent asked her whether she would give him her affidavit to that effect. She said that she did not want to be involved. No affidavit. The same day, deponent asked the secretary of the draftsman of these charges whether she had ever heard him use these terms. She said that she had not. He asked her whether she would be good enough to give him her affidavit. She said that she would not give an affidavit to either side.

The same day deponent asked the attorney who had occupied the room with him whether deponent had ever called him "ignoramus" or "imbecile". He could not remember whether he had been called "ignoramus" or "imbecile". He remembered an occasion when some words displeased him. Deponent was willing to accept even this affidavit and asked whether the attorney would give him an affidavit. He said: "I am not interested in giving affidavits". More on this conversation later. This is supposed to be a proceeding where there are no protagonists pitted against each other, no sides. General Counsel is not supposed to be interested in obtaining a conviction. But it is evident that these people who refused their affidavits know the true nature of this proceeding and do not wish to offend those who occupy the seat of power. Deponent is being refused the opportunity to prove his innocence.

Deponent denies that he called his co-workers "imbecile" or "ignoramus". The charge is false and patently false. The truth of a charge that deponent called his co-workers "imbecile" or "ignoramus" would not be proved by showing that he called one of his co-workers "imbecile" or "ignoramus". It is shocking that these men, General Counsel and his willing assistant, should be permitted to

jeopardize the job of an employee by such wanton and indiscriminate charges. General Counsel and his assistant are guilty of uttering and approving a falsehood for which there cannot be the shadow of an excuse. Such a charge is justified only after obtaining the statements or affidavits of the co-workers. They have no such affidavits or statements, unless it be the affidavit of the General Counsel's willing assistant; and it will be evident before deponent concludes this affidavit that belief in the truth of his statements is not justified. Deponent, in more than twenty-eight years of experience at the Bar, has encountered no parallel to this recklessness. Surely they cannot believe that deponent has no redress. Deponent states that he at no time called a single one of his co-workers "imbecile" or "ignoramus".

Charge II and III are in fact the same. They deal with the same acts. Necessarily in typing a letter, both government property and personnel are used. The draftsman has sought by repetition and the use of the plural to magnify the alleged improprieties. Deponent used "telephone, typewriters and filing cabinets". Deponent had only one telephone, one typewriter. He used but one filing-cabinet to keep one thin, personal file. The stenographer is said to have maintained personal correspondence files and files for bids and estimates. There was but one thin file for bids and estimates that will be delivered to the President for his inspection. In Charge II deponent is said to have "improperly used the office and its miscellaneous equipment, including telephones . . . , by making and receiving numerous telephone calls . . . , and by requiring your stenographer . . . to make personal telephone calls for you". In the last paragraph of Charge III it is said that deponent required her to delay completion of official work, that as a consequence the work was not only delayed but postponed.

The draftsman likes the word "required" with the implication of coercion. She was not "required". Charge II and III could have been stated in three short para-

graphs. But if the charges were shorn of adjectives, repetitions and plurals, the absence of meat would have been evident even to the inexperienced.

To be exonerated from these charges it is sufficient that deponent show that he did what he did with the knowledge and acquiescence of his superiors, and was not warned to cease; thereby implying acquiescence or approval. If it were otherwise, an innocent employee who has done the same thing year in and year out might suddenly find that the acquiescence of years could be turned into a trap by unscrupulous superiors.

Deponent has been dictating occasional personal letters and making personal calls ever since he entered government service and has never been told that the practice was forbidden. The affidavit of Francis Dwral, covering a period beginning in 1945 substantiates this. Can the practice of years suddenly become reprehensible and the subject of charges without warning to deponent? Will General Counsel and the President make their affidavit that they did not make personal calls or dictate an occasional personal letter, or can they state that it was not common office practice for all personnel, including the complaining stenographer? Indeed, when the substance of this charge was brought to deponent's attention at one of the conferences mentioned in deponent's letter of July 23rd, deponent asked General Counsel whether he had not made some personal calls. It happens that General Counsel had had a house built for him some months before. General Counsel admitted that he had made personal calls. He then asked deponent how many calls deponent had made and deponent estimated an average of three a day. If an excessive personal use of the telephone is made, it is not difficult to discover and the person is usually told of it. Deponent was never so told. Deponent has seen the former Assistant General Counsel make personal calls and dictate a personal letter occasionally.

At one of the two conferences, the President of the Corporation, professing shock at the moral obliquity of

deponent, exclaimed, "Government paper." Deponent used his own personal stationery. This, deponent submits, is an act of consideration for government property not shown by many government employees. For a long time this box of stationery was on top of the filing cabinets within full view. Later it was placed in one of the filing cabinets in tidying up. It is still there. Deponent's personal file was kept in the filing cabinet, where anyone so disposed could read it. And others besides deponent went to these cabinets, to take out copies of bills or statutes. Deponent's desk, where he kept some files was never locked, until this proceeding was started.

Deponent used second sheets, belonging to the Government. But back in 1945 when deponent joined the Foreign Economic Administration, deponent naively purchased a ream of second sheets. Deponent's immediate superior had told deponent that an occasional personal letter was countenanced so long as it did not interfere with the work of the office. But when he saw the ream of second sheets, he laughed outright and said he thought the government could spare the paper. This ream, practically intact, was with deponent when he joined F.N.M.A. The reason that it was not used was that it was not of the same size as the government paper. In one of the moves that deponent suffered under General Counsel, he cleared out a number of things and sent it to stock. It far exceeds the quantity of paper used by deponent. Deponent has no doubt that the government has found use of it.

Charge Ha and Charge IIa are quickly disposed of. Deponent has only one personal file and it contains all of deponent's letters, with a possible few exceptions. The file shows that the stenographer typed the following letters:

Nov. 8, 1950	Letter of seven lines.
Jan. 8, 1951	Letter of twelve lines.
Feb. 12, 1951	Letter of eight lines.

When this matter was discussed at the meeting of July 14th, deponent asked permission to go back to his

room and bring back his file of personal correspondence for inspection. General Counsel looked at it and said to deponent in words or substance: "Well, one thing they can't say and that is that you write long letters." Well, they have said everything else that they possibly could. But the letter file of itself should have caused General Counsel and the President to suspect that there was something questionable in the charge that deponent had used three quarters of the time of the stenographer. As to the filing of bills, it is obvious that it was so trivial as not to be worthy of mention, for deponent had few bills at the time. He was not building a home and he was not carrying on a business. It is clear from the affidavit that the work did not interfere with any stenographer's official duties. Particular note should be taken of the statement that she was instructed that she should do official work first. This statement as well as the other statements in this affidavit were made without the least stimulus to her recollection by deponent, nor was it easy to obtain this affidavit. She was not under deponent's domination and control. These same instructions that official work came first were repeated to the second stenographer when she first came with deponent and again when deponent occupied the office with the other attorney. There was basically a selfish reason for the repetition. For it was obvious that if deponent's occasional letters interfered with the official work of the other attorney, the privilege, and he regarded it as a privilege, of dictating an occasional personal letter could be taken from him.

Charge IIb and IIIb are substantially the same and if the items in the latter are discussed in their order, the subject will be substantially covered.

IIIb. 1. She did not make numerous telephone calls concerning deponent's personal business to supply houses and stores selling building materials and supplies; and to deponent's architect and to contractors. Deponent has already stated that these calls averaged three a day. Most of the calls necessary in the building of deponent's home

were made from the deponent's apartment. The carpenter, bricklayer and other trades get on the job about 7:30 A.M. They can be reached before that hour or in the evening. There is a better clue to the number of these calls. Deponent found on the desk which the stenographer left in June the Autodex in which she kept the names and telephone numbers of the firms which she occasionally called. Even with respect to some of these firms, deponent made the calls personally. He did not know that she had all these names. She never, except to deliver an occasional perfunctory message, carried on any conversation. Deponent usually talked with the painter and carpenter, himself. As for the large firms like Barber & Ross, General Electric Supply Co. and Cushwas Brick, deponent knew the person with whom he wanted to speak and could get the person much more quickly. When deponent moved in with the other attorney, the number of calls that she made for him was further reduced, as she was quite busy with the work of the other attorney.

The following are the names in the Autodex, which will be delivered to the President:

Alexandria Water Co.
Chas. A. Bukner, Painter
Barber & Ross, supply house
Collins Millwork, millwork
Cushwa Brick
Ewing Lumber Co.
Galligher & Huguely, lumber
Gilpatric, Overhead Door Sales Co.
General Electric Supply Co.
Kapach, carpenter
Lawrence Stevens, architect
Tart Lumber Co.
Virginia Roofing

Arranging for the water tap is no continuous operation. It may have required as many as five calls. She did not always get the number. Occasionally deponent tried to

get the painter, Mr. Buckner, at noon when he was expected home for lunch. There may have been as many as fifteen calls. The stenographer may have made one-third of these. Barber & Ross delivered the kitchen equipment. There may have been twenty calls when the building reached that stage. She rarely made the connection. In the case of the Collins Millwork, Mr. Collins lived close to deponent, and deponent would call him from his home. There may have been a dozen calls from the office. The stenographer made most of these connections. In the early part of the construction deponent called the Cushwa Brick Co. about twenty times. She made few of these calls. General Electric Supply Co. supplied some of the electric equipment. An estimate of fifteen calls would be generous. She made few of them. Overhead Door Sales Co. supplied the garage door. Erring on the generous side, this may have required five calls. Gallagher & Huguely supplied no lumber. Deponent may have called twice. Tart Lumber Co. supplied a small quantity of lumber at the beginning. Five calls would be sufficient. Ewing Lumber Co. supplied the lumber. Forty calls over a period of four months would be a fair estimate. She made a few of these. Mr. Stevens, the architect, deponent generally called directly. There may have been as many as twenty calls. He didn't supervise the job regularly but visited the job when required on a per diem. There were other calls. But this will give a good picture of the number of calls necessary and of the part played by the stenographer. It did not interfere with her official work. She could still do cross-word puzzles and read a book, which she did. The personal work took her away from this form of amusement, never from official work.

IIIb. 2. The stenographer in question wrote no letters to contractors and supply houses concerning bids, estimates, prices and other matters. No such letters will be found in the personal file or in the file of bids and estimates. There are none. The reason will be noted in the file of bids and estimates. If the offer or bid was satisfactory, deponent signed a copy and mailed it or delivered

it personally to the contractor when he called at deponent's home. No letters were written with respect to prices as the file shows. The price or cost is set forth in the bid or offer. For prices of materials, you don't write a letter. You pick up the telephone. Further, the stenographer, as will be seen at a glance, typed none of the bids or offers, except a contract of one page with the bricklayer, likewise with the carpenter and architect...

IIIb. 3. The stenographer typed and filed in a personal file, kept in the cabinet where everyone could look at it, personal letters. It will be delivered to the President with this affidavit. The following is the quantity of work involved:

1951		1952	
February	1 letter	January	0
March	2 "	February	2
April	7 "	March	6
May	1 "	April	3
June	7 "	May	3
July	4 "	June	1
August	7 "		
September	1 "		
October	4 "		
December	5 "		

The foregoing shows an average of less than one letter a week of about ten lines. Will General Counsel and the President make their affidavits that they dictated no personal letters or that their letters amounted to less?

IIIb. 4. During the period specified, Feb. 1951 to June 1952, in which she worked for deponent, she did not maintain the personal check book or records, for the very simple reason that there were none to maintain. Deponent never professed to being systematic and methodical in his personal records. He hated such detail. That is the reason he asked his stenographer to do the filing, although he had the time to do it himself. It will be shocking to the President to learn that deponent did not fill out check

stubs. There were no records except the cancelled checks and deponent compared those, himself; he is a trusting soul or he would not have let himself in for such accusations. About April 1, the stenographer tried to show deponent the error of his ways. Deponent tried to discourage her because there was no good purpose served in numbering and filling out the stubs when deponent made out checks at home on the same account from another book. The stubs would never show the balance. But she wanted to try and deponent let her. Deponent even started to fill in some stubs himself. The check book in question will be delivered to the President. Some of the stubs are in the handwriting of the stenographer. Alas, the bad habits of deponent soon prevailed and the project died on May 26th.

During the period mentioned, February 1951 to June 1952, she did make out checks for deponent, as follows:

1951		1952	
February	0	January	2
March	0	February	3
April	0	March	1
May	0	April	7
June	0	May	7
July	0	June	0
August	0		
September	0		
October	1		
November	11		
December	9		

Deponent will deliver to the President his cancelled checks for the period.

IIIb. 5. She took care of no personal business for deponent whatsoever and did not leave the building except on one or two occasions to go to the post office for deponent during her lunch period and except on about eight occasions in six months to put a coin in the parking meter. On these occasions, deponent was either busy with official work or

not feeling well. It did not take long, the car being parked usually outside the building or a short distance away. She had no official work at the time. When deponent moved in with the other attorney, deponent no longer asked her for this personal favor.

The draftsman has forgotten to mention the file of bills and invoices. When one builds a house, one has bills. Deponent will also deliver this file to the President. Deponent has said that the stenographer knew little of filing. It is but necessary to look at these files to confirm this statement. There is no tidiness, the chronological order is often not observed, letters that should be filed in the personal file are filed in bills or contracts, with pencilled memoranda of telephone numbers filed among the bids. But it was all right with deponent. If there was any semblance of chronological order, he could sooner or later find the information he desired by looking into all three files. In the early months deponent tried to teach her something about filing, but she had her own ideas. And he let her have her way.

How much time does it require to do such filing? For a period of eighty-four weeks from November 1, 1950 to June 13, 1952 the personal file contains 122 sheets of paper or 1½ sheets per week. There are 154 sheets of paper in the file of bills or 6 per week. There are 85 sheets of paper in the Bid & Contract file or 4 per week. Deponent also had a file containing papers dealing with his government employment, a file dealing with the Veterans Administration but these required no attention on her part or very rarely. There were also two files in which, once a month, a monthly statement was filed. She did not always file the monthly statements. Deponent will deliver these to the President if he desires them.

Summing up, it appears by probative evidence that the stenographer made the telephone connection for deponent once or twice a day, that she typed a letter of ten or twelve lines less than once a week, that she filed twelve sheets of paper a week, and that she made out a few checks. If there

is any other work that deponent has forgotten, it is obviously trivial compared with the work mentioned. This work was given to her when she had no official work to do.

Everybody knew that deponent was building his own home. It was a venture he was proud of. He brought the draftsman of this charge to the house between 12 and 2 P.M. one day. On another day at the same hour he brought the attorney in his office to look at it. On a Saturday he brought the President out. Everybody inquired how it progressed and when deponent would move in. Deponent would tell them of the obstacles and difficulties he encountered. Deponent frequently carried his files between the office and his home. When making or receiving a telephone call he would on occasions have to consult the file. Everybody knew what was in the portfolio. They would all ask, for they knew that FNMA was not so busy as to require home work, far from it. And deponent told them. The President and General Counsel saw deponent frequently upon his arriving and leaving the office with the portfolio. General Counsel and deponent compared notes and discussed the problems of building a home at least a dozen times. At lunch one day deponent said that it was too bad that General Counsel could not also have acted as his own builder. He would have saved money. It was principally a job in coordination and with a few telephone calls the job could be done. General Counsel reminded deponent that his own house was about thirty-five miles out. There were three occasions when deponent excused himself after lunching with the staff, including General Counsel and said he had to go over to Fries, Beall & Sharp, a hardware concern, nearby. On another occasion, the present Assistant-General Counsel was with deponent when he visited the lighting fixture establishment, near the office.

The office of the Assistant-General Counsel was next to that of deponent. The door between was usually open. On a number of occasions he was present when deponent was speaking to some tradesmen or supply house, giving

instructions as to delivery of materials or when certain work should be done. He was present when a personal letter was being typed although he probably did not look to see whether it was personal. Superiors do not watch a man unless he gives cause for distrust. Deponent was never told that the work he was doing was forbidden. But mark this. On September 3, deponent spoke to the attorney who had occupied the same office with him with a view to obtaining his affidavit on the facts. The following conversation occurred:

Green: "Milton, I suppose you know that charges have been preferred against me."

Gordon: "Yes."

Green: "I suppose you have given a statement?"

Gordon: "No, I haven't. I was not asked to give one. I don't mind telling you what occurred. Jim (the draftsman and investigator) came to me and asked me what I knew about the personal work that you did on your house. I told him: 'Why, Jim, there's nothing new about that. Bob (General Counsel) knew he was doing some personal work on his house. Tom (Assistant General Counsel) knew it.'"

The statement, then, of Mr. Gordon, if taken, would have been unfavorable to the proponent for the essence of this charge consists in doing personal work without the knowledge or acquiescence of one's superiors.

At the meeting of July 7th, the President remarked that deponent kept to himself in his room. He said that, deponent was sociable enough at the parties. General Counsel chimed in, saying that it was a curious and unexplainable fact, that deponent could be so sociable at parties and the opposite during his working hours. But if there is nothing to do, should deponent go visiting and waste the time of others. Indeed, he tried this early, when he was bored beyond endurance and was rebuffed pleasantly by Assistant General Counsel with the words that while he would like to engage in pleasant conversation, he was very busy.

Very busy, yet his assistant did not have a thing to do. But why should these men presume to judge deponent by the standard of sociability? Is that the standard set by the government? They have not dared to say anything against the ability of deponent. The government needs less sociability and more integrity. And the real grievance, as will be shown, is deponent's integrity. If he were more sociable, more complaisant, his opinions would have coincided with those of his superiors.

When General Counsel and his willing assistant were admitted to the bar, they took a solemn oath to advance the cause of justice and to protect the innocent. They knew that deponent was innocent, that what he had done was done with the acquiescence of his superiors. Indeed, a course of conduct pursued for six months openly and without the least concealment would spell acquiescence. Despite what the draftsmen had been told by the attorney, despite his own personal knowledge, he drafted these charges. And General Counsel, who had knowledge, and he would have had to be deaf, dumb and blind not to have had it, approved the charges for signature by the President. This is an evil act by evil men, intent on an evil design.

Pursuing this evil design, the draftsmen wrote and General Counsel approved the following charge:

"That the improper use of the stenographer, as set out above particularly during the time the house was under construction, required her to devote practically three-fourths of her time to your personal work, leaving only approximately one-fourth of her time available for her Government duties." By what miracle could deponent use practically three-fourths of the stenographer's time for six months without the full knowledge and acquiescence of his superiors. Consider further that deponent worked within a few feet of the Assistant-General Counsel with the door between generally open, that in the same room with him was an attorney, an "eager beaver" as he once called himself, who was in a fever and a stew to get his work out no matter what the expense to his colleagues.

It is crystal clear that General Counsel and his willing assistant were not interested in stating the facts, that they were interested in piling up accusation upon accusation. And in their fixation upon their design, they overlooked the fact that the accusation was an indictment of General Counsel's administration of his office. In any private organization, an officer, who did not discover until after the lapse of eight months that an employee had used three-quarters of the time of a secretary on personal work, would be discharged immediately for laxity. It is obvious that General Counsel and his willing assistant think that they cannot be called to account for falsities, no matter how obvious. They do not have to prove the charges. They are not submitted to the test of cross-examination. All that happens is that the burden of proof on deponent is increased. And the burden, as this affidavit shows, has been great.

In this charge it is said that deponent frequently interrupted the stenographer while she was performing official work for another lawyer and required her to attend to deponent's personal business and to delay completion of official work. This is false and known to the draftsman to be false. He did not get this information from the lawyer in question. It is preposterous on its face. Would any lawyer permit it? Would this lawyer permit it? One concrete incident, which occurred a few days before his stenographer was taken from him, will prove this. Deponent was dictating on three matters, which had come in together. The stenographer had an incompleted matter in her machine. The lawyer in question appeared at the door with some papers in his hand and waited till a pause in the dictation. Then he held the papers out to the stenographer and said to her in deponent's presence: "Put everything aside and do this. This is an emergency." Here was insult, indignity and insolence, which deponent will not take from a professional colleague. He would have lost all control over the stenographer, who on the records had been assigned to him, if he had permitted this. It was another straw in the wind. Deponent said: "She will not put my work aside." The lawyer found a ste-

nographer to take care of the emergency without difficulty. Would this lawyer, who wanted his work done immediately, stand for delay caused by the personal business of deponent? The draftsman knew that he was uttering a falsehood when he drafted this charge. And General Counsel, also familiar with the feverish anxiety of this lawyer to complete a piece of work and earn his favor, knew also that there was no truth in it. From his familiarity with deponent's character, sense of duty and responsibility to the government, he knew that there was no truth in it.

Charges II and III are false. The personal work performed by the secretary was performed with the express knowledge and acquiescence of his superiors. Even without express knowledge and acquiescence, the performance of such personal work over a period of six months openly and without concealment would and does charge his superiors with knowledge.

Charge IV, Improper Absence from Office, states that during the period of six months or more, while deponent's house was under construction, deponent "frequently absented yourself from your office during official working hours at least two or more hours at various times daily . . ." What is the precise issue that deponent must meet? Is deponent charged with absenting himself frequently or daily? Did he absent himself at various time or at various times daily? Consider the phrase, "at least two or more hours." Verbiage and more verbiage, poured on helter-skelter. The ordinary man, reading this product of the draftsman, would have suspected his competence and trustworthiness. But not the General Counsel and the President.

The draftsman confined the absences to the period when the house was under construction. He is mistaken. They occurred before, after and during that period. They had nothing to do with the house. Deponent did not visit the house during office hours without taking leave, except on two occasions between 12 noon and 2 P. M. He visited the house at least once daily and often twice before and after office hours. He was there at 7:45 A. M. and in the evening.

That is the reason he brought his car into town during this period. He had a carpenter-superviser on the job, who took charge of matters during his absence. There were a number of emergencies and he took leave on those occasions. Deponent, according to the records of FNMA took the following leave in 1952:

Jan.	25	1:15 to 5:15
Mar.	14	8:45 to 5:15
Apr.	4	1:15 to 5:15
Apr.	18	1:15 to 5:15
Apr.	25	8:45 to 5:15
Apr.	28	8:45 to 5:15
Apr.	30	8:45 to 5:15
May	7	8:45 to 5:15
June	17	11:15 to 3:15

This is more leave than deponent has ever taken in a corresponding period. In 1951 deponent for the corresponding period took the following leave:

April 26	4 hours
May 2	8 "
May 17-18	12 "

On two occasions deponent visited the house between 12 and 2 P. M. He had nothing to do. On one of the two occasions he took the able draftsman of these charges. On the other he took the attorney occupying the same office. The information which deponent, unsuspecting, gave to the draftsman on this and many other occasions and to General Counsel is now being perverted to their aims. Deponent did not on the occasions in question take official leave. Did the draftsman? Attorneys do not check in and out. They are not under surveillance. General Counsel often exceeded the time allowed for lunch, to deponent's knowledge, as well as did the other attorneys. Attorneys do not work by the clock. There is no attorney in government who has not put in many hours of his own time on government work, especially during and immediately after the war. When there is a job to be done, he stays until it is completed. To point to only one example, deponent on June 16, 1951,

came to the office, picked up some files and spent the evening in digesting them. The next day, Sunday, he spent from 9 A. M. to 11:30 A. M. at the RFC library looking up the law. The "in and out" records of these days and of the time prior to these dates will show a number of such visits. He was present at conferences, which often commenced at 5:15 P.M. Was a stop-watch pulled on deponent when he gave his time voluntarily as appeal agent on one of the draft boards? Did deponent hold a watch in his hand when he volunteered for extra duty to relieve the sick and the dying in the First World War, staying up frequently thirty-six hours. What kind of men are these who will grasp at these trivia, magnify minutiae to serve their evil designs?

On the afternoon of September 8th deponent went to the office of Mr. Wilson, formerly Assistant-General Counsel. Mr. Wilson stated that he did not know that charges had been preferred, although it had been discussed with him and he had given information with respect to two incidents of alleged refusal to make a change. Deponent then presented to him a proposed affidavit, which he had written out while waiting for Mr. Wilson to arrive. Said proposed affidavit is marked Exhibit D1 and made a part hereof.

Deponent then asked whether the matter contained in the affidavit was correct. Mr. Wilson read the items again. The matter of personal work was brought up. Deponent specifically asked him whether he knew of it. He answered: "Yes, I knew that you were doing some work on the house and dictating a personal letter now and then. As it did not interfere with the work of the office, it was all right with me." Deponent's prolongation of his lunch hour were discussed. Mr. Wilson said: "Of course, I knew that you prolonged the lunch hour when you had no work, and you may have attended to personal business. We all did."

At the end of the conversation, he repeated he did not want to make an affidavit and said: "If called, I will testify to the correctness of this affidavit except the item that you

never refused to do any work that was given to you." He wished deponent luck.

There were a number of occasions when deponent lengthened out the lunch period from 12 to 2 P. M., shortening the afternoon. The alternative was to sit in his chair, fingertips together, rocking gently to and fro and gazing at the opposite wall. It was humanly impossible for deponent to do this every day. He wandered the streets aimlessly, looking in at shop windows. From the very first day that deponent came with FNMA, he was not kept very busy. There were days upon days when he did nothing. And despite this, another attorney was taken on shortly after deponent came to FNMA. He was the draftsman of this noble statement of charges. And he from time to time expressed his disgust. One day he said to deponent: "Why did they employ me if they had no work for me." And this was no isolated remark. It is but necessary to look at the output of each of the attorneys to verify deponent's statement. And in the latter part of 1951 another attorney was taken on, and this was at a time when the work of FNMA was on the skids, due to the restrictions on residential building. Indeed, the field agencies were staffed with unneeded attorneys at the beginning of 1952. There had been no call for help from the field. And when the field needs help, it never fails to ask for it. The excuse for this will be the prospect of defense work. But defense work never did take up the slack caused by the restrictions on building.

It was a perplexing and enigmatic situation, which deponent was never able to solve. He had no work. But when he approached Assistant General Counsel the latter would actually say that he had so much work on his desk that he had not been able to read and sort it. So deponent would ask him to pass it on to deponent without reading. If deponent came to a difficulty, he would consult Assistant General Counsel. It did no good. Deponent more than once told his superiors to pass work on to him without worrying whether he already had sufficient. Deponent

would inform them if he reached the point that he could not handle it at all. But there was no change in the situation.

It was an amazing situation. Shortly after the last attorney was employed, deponent was called to the office of the President and offered a job on the administrative side. The President said that deponent had not been kept very busy. And this was shortly after he had approved the employment of an attorney. Deponent said that he was a lawyer and preferred the law. He brought up the fact that a lawyer had been hired although deponent was not very busy and also that a second lawyer was to come on. But the President said that the second lawyer would not be hired. Deponent understands that the second lawyer had also been offered a job but at the last moment had accepted a job elsewhere. When deponent declined to leave the law, the President said: "All right, no hard feelings. People generally prefer the administrative side and I thought you would." He didn't think anything of the kind. For deponent told General Counsel of the offer and of his declination and General Counsel told deponent that he was familiar with the matter and that he had told the President that deponent would not accept. But it was obvious that deponent was too observant. He was a dangerous man to have around. He posed implicitly embarrassing questions, such as: How could the President approve the addition of a lawyer to the staff when he knew that the lawyers on the staff were not busy.

At one of the conferences, this charge was discussed and deponent stated that he had not had enough work, that he prolonged his lunch hour on occasions to shorten the afternoon, that he spent the time looking into shop windows and wandering the streets. The President looked at General Counsel and left to him the burden of answering. General Counsel said that it might have been due to deponent's attitude. Deponent received as much or more work of significance than the other operating attorneys. Every question involving a complicated set of facts, where an opinion

was desired upon which action was to be taken, was referred to deponent. And the President knows this, for on more than one occasion he asked that a matter be sent to deponent for an opinion. There was no attitude on deponent's part and Assistant-General Counsel never hesitated to send a matter to deponent. Indeed, there was no one else whom they could call upon for a trustworthy opinion, and this is not said from vanity or immodesty. For, the Lord knows, deponent makes his mistakes. That there was no one else will be shown when deponent comes to discuss the real cause for this proceeding.

Charge V states no charge. An attorney is responsible for his opinions. The directions or orders of a superior would not exonerate him from blame and liability. He also has his own professional reputation to maintain. Two diametrically opposite opinions cannot both be right. A lawyer may object to writing such opinions. When asked to write such opinions, it is understandable that the attorney should show resentment. An attorney may argue and persuade. He may express unwillingness to make a change, may even refuse to make a change where he believes it to be wrong. He may request that his superior or some other attorney write the opinion if he holds a contrary opinion.

Deponent, it is said, was resentful of authority to the point of insubordination. No facts are set forth. Is this a charge of insubordination? It is impossible to say. He was argumentative. That is not unusual with lawyers. All this during the period between April 1951 and April 1952. Why this period is chosen, deponent does not know, except that the first incident dealing with an alleged refusal to change my work probably occurred in April 1951, and the other in April 1952. But soon after, in May 1952, this Assistant-General Counsel departed. As the argumentativeness vanished after April of 1952, it is not the basis for a charge in July, 1952. The present Assistant-General Counsel has not had occasion to complain. During part of the period mentioned, deponent worked under another Assistant-General Counsel who died. It is apparent that

deponent earned his confidence and trust for he asked deponent to sign his own name to letters. The practice did not survive the gentleman's untimely death.

There is this to be said of Charge V. We are at last given a hint of the real grievance against deponent, which motivated these charges. This will be shown in a series of examples, stating dates, facts and circumstances. They are in the record. They show ignorance of elementary principles of law, lack of thorough training, lack of ethical standards, and falsification. Deponent was not and could not be a willing party to such proceedings.

Example 1. In this case an attorney was offered $7,000.00 in settlement of a claim for legal services, although he had originally O.K.'d an estimate of $750.00. He has refused the offer of $7,000.00 and is now suing for $22,000.00. FNMA must pay $5,000.00, even if it wins the law suit, in addition to an estimated $2,000.00 in defending the suit. This is the result of neglect to examine the contract of retainer and determining the rights of the parties. The facts are as follows:

Under the date of Oct. 18, 1950, an attorney, William H. McClendon, agreed in writing to perform legal services for FNMA, at the rate of $5.00 an hour. The foreclosure of a large piece of property had been discussed with him. On October 19, he initialed a letter stating that "the cost to the Association for legal services for the Association's attorney on the contract basis at $5.00 an hour, estimating at the outside 150 hours, would be $750.00." He obtained judgment by default on this foreclosure.

In December of 1950, McClendon signed another agreement, which provided that all fees for services shall be subject to the approval of the Association, whose decision as to such fees shall be final.

McClendon thereafter conceived the plan of claiming compensation on the basis of reasonable value, asserting that the agreement for hourly compensation expired when the office of the Association had been moved, that an im-

portant condition of the expired contract was that he was provided with office space, expert stenographic service and all other modern office facilities. He then claimed that he had done no work under the second contract. Having rid himself of both contracts, he claimed compensation on the basis of quantum meruit, regardless of any agreements to the contrary. At first he claimed $10.00 an hour, then abandoned this figure for a claim in the amount of $22,000.00. The claim had no merit. The contract contained no provision obligating FNMA to furnish office space and stenographic service. It chanced that the office of the attorney and of FNMA were in the same city. The attorney used FNMA's office as a convenience. All of FNMA's foreclosures are handled in the office of the foreclosing attorneys. The first contract did not expire because of removal of the FNMA office. However, FNMA had agreed to the statement in McClendon's letter that it had expired, but the second contract was in existence. It made the fee dependent on our approval. The claim by McClendon that he had not done any work under the second contract amounted to no more than a claim that he was not bound by the contract he had signed.

General Counsel carried on correspondence and negotiations with McClendon on the basis of quantum meruit, without examining the contracts and determining FNMA's right. No one thought of telling McClendon in words or substance that if he thought for a moment that FNMA would enter into negotiations on the basis of reasonable value in the face of the contracts, he was just out of his mind. An attorney, the draftsman of this statement of charges, was sent to McClendon to talk settlement. This attorney also had not familiarized himself with the terms of the contracts. In fact, he did not appear to be familiar with them even after deponent had written his opinion, Exhibit E enclosed herewith and made a part hereof.

After the offer of $7,000.00 was made, Mr. Kelly, then Assistant General Counsel, sent deponent a request for an opinion, Exhibit F hereof. It is but fair to state that

Mr. Kelly had nothing to do with the negotiations. He had recently joined the staff. But the facts he gave deponent were erroneous, as a comparison of Exhibits E and F will show. No one seems to have thought of saying to an attorney: "Here are the files. Give us the facts and the law." Time and time again, deponent would be given facts that were either erroneous or incomplete. Deponent learned by experience to distrust these facts.

McClendon did not accept the offer of $7,000.00. It became necessary to fix his fee in accordance with the letter to McClendon, Exhibit G hereof. It was in this letter that McClendon for the first time was told that he was bound by the provisions of the contracts. This was in accordance with deponent's opinion. But still the offer was held open. In fixing the fee, a figure of $5,000.00 was wanted. The highest figure that deponent could reach was $3,500.00.

Deponent, although he had written a memorandum, which justified only $3,500.00 and although his own calculation was below that sum, was asked to write a memorandum for the file, justifying $5,000.00. He told Assistant-General Counsel that he could not do it. This was a refusal, even though politely worded. It was accepted practice in this office to ask the same attorney to write an opinion contrary to the one he had previously written and which was in the record. No one seemed to give the least thought to the self-respect and integrity of the attorney.

The attorney who drafted these charges wrote the memorandum for the file, Exhibit H hereof. The justification for deponent's refusal is demonstrated by this memorandum. The draftsman has falsified the facts and General Counsel signed the memorandum, knowing this. The draftsman stated that "the original agreement with Mr. McClendon was for $5 per hour and the Association was to furnish office space and stenographic assistance." General Counsel knew that this was not the fact. The contracts contain no such obligation. This was the specious claim of McClendon. This claim had been denied when McClendon had been previously informed that he was

bound by the provisions of his contracts and the essential provisions were brought to his attention. But further, deponent's opinion, Exhibit E supra, which General Counsel and the draftsman had received, contained the following:

> "In passing it should be pointed out that there is no substance to the argument that the hourly base figure did not take into consideration an important condition of the expired contract, that the New Orleans office provided him with office space, experienced expert stenographic service, and all other modern facilities, whatever those may be. The letter agreement drawn by Mr. Reid in Washington makes no mention that McClendon was to be provided with office space, etc. In the absence of any agreement to the contrary, he was to perform his legal work in his own office with his own facilities. He was, therefore, not entitled to any increase in his remuneration when he performed the work in his own office. The arrangement whereby he used the local facilities of FNMA was one of convenience and not a contractual one. Nor was McClendon's expense increased substantially when he did the work in his own office. It did not add to his rental. He is presumed to have experienced stenographic service and all the facilities necessary to do a job."

The file memorandum, Exhibit H, supra, prepared by the draftsman of those charges, stated inter alia on this subject: "In addition, I feel that an additional 24 hours should be allowed for the time spent by Mr. McClendon in Washington which were not included in Mr. Wood's calculation." The impression is given that Mr. Wood had erred in failing to include it. He could know that Mr. Wood had not included it only by asking Mr. Wood. The figures did not show it. Mr. Wood would not have failed to tell him that an attorney who at his own request comes to Washington to talk settlement is not entitled to compensation for that trip. Indeed, the draftsman did not have to be told. When he wrote his memorandum he had

consulted, as it shows, deponent's memorandum, Exhibit E, supra, which contained the following:

"McClendon gave us a summary of his services. This appears exaggerated and vague. For instance, as part of his services he records the three days he spend in Washington 'for the purpose of discussing many details of this transaction'." For those three days McClendon was allowed $240.00.

The sole reason given for incurring this increased liability is "in the interests of liberality". This is sheer profligacy with the taxpayer's money. Personal liability has been imposed on officers of the government for less cause.

The opening sentence of this memorandum, Exhibit H, supra, reads: "I have made an independent inspection and study of the file in this case and have arrived at my own estimate as to the number of hours spent by Mr. McClendon as disclosed by his summary of services." No independent study and inspection was made. That is clear from the letter. The draftsman took the highest of three figures "in the interests of liberality." This opening sentence was intended to show that General Counsel had acted wisely after study of the problem.

The McClendon case demonstrates incompetence, which has caused financial loss to the government, and falsification of the record. Deponent expressed no criticism of the fantastic handling of the case. He didn't have to. His presence and his known standards were sufficient criticism of such incompetence and falsification. It is this presence that the proponents have decided that they must remove at all hazards.

Example 2. Deponent has stated that there was ignorance of fundamental principles of law. Every attorney with a government corporation soon learns that a government corporation is liable for costs if it is an unsuccessful litigant. *R.F.C.* vs. *Meehan*, 312 U. S. 81. In this respect it does not enjoy the immunity of the sovereign.

Yet General Counsel circulated in the field to agency counsel a memorandum prepared by one of the attorneys stating that FNMA has a statutory exemption from the payment of costs. It is no exaggeration to say that every line of this memorandum, Exhibit I hereof, contains an inaccuracy. The more conspicuous errors are as follows:

1. The quotation purportedly from Rule 54 (d) is, it is evident on its very face, is not a quotation from the rule.

2. The case of *Federal Deposit Ins. Corp.* v. *Casady* was overruled by the Menihan case (supra).

3. The case of *Defense Supplies Corporation* v. *U. S.* does not stand for the principle stated in the memorandum.

4. The case of *Ewing, Federal Security Administrator* v. *Gardner*, 341 U. S. 324, applies to a personal agent of the U. S. and not to a corporate agency.

5. The principles applicable to fees are not the same as those applicable to costs.

6. There is no statute exempting government corporations from the payment of costs. The quoted statute applies to the United States.

Deponent received a copy of the memorandum in the latter part of March but said nothing. Is this an example of argumentativeness and criticism? Nor did he then know that the memorandum had been sent to field counsel by General Counsel. But in April the subject of fees and costs was assigned to deponent for discussion at the May meeting of agency counsel in Washington. It was obvious that if deponent expounded his views to agency counsel, they would ask how he reconciled these views with those set forth in the memorandum which they had recieved. Deponent after considerable thought, asked General Counsel to give the subject to the attorney who had prepared the memorandum. He pointed out some of the errors in the memorandum and said it might be harmful to the prestige of the home office if one of its attorneys had

to express the opinion that the conclusions of another of its attorneys were erroneous. General Counsel was cold and unfriendly. He did not think that it could affect the prestige of the office if such a discussion occurred openly before agency counsel. He then said in words or substance: "It is these discussions of the law that cause delay in getting out the work." Deponent sat in amazement. Did General Counsel really believe that the notorious and chronic delays of the legal division were caused by the rare discussions of law? There were delays, it is true. These delays had become the butt of jokes and gibes by members of the other divisions, openly recited in the face of General Counsel at the Christmas party and other parties held in the last year. Deponent, in asking to be relieved of the assignment, was doing it in the interests of the office. The subject of fees and costs went back to the other attorney on the errors in the memorandum were perpetuated in the discussion.

Example 3. In this case General Counsel determined that mortgages on leaseholds were ineligible for purchase by FNMA, despite the statutes and regulations to the contrary. Deponent had drafted an opinion holding that they were eligible, Exhibit J. This draft lay on the desk of General Counsel for five weeks and was resurrected after calls from the outside. Deponent was told by General Counsel to draft a letter holding that the mortgages were ineligible for purchase, but he gave no reason. Deponent inquired whether the arguments in agency counsel's letter had anything to do with this determination. If so, he said he could show that there was no substance to them. General Counsel answered that he realized that there was no substance to the arguments of agency counsel. General Counsel did not point to any error in deponent's opinion holding that the mortgages were eligible. It was deponent's job to furnish a plausible basis for holding the mortgages ineligible. Deponent drafted a letter based on the fact that mortgages on leaseholds were an innovation in the locality and were not readily marketable, Exhibit

L hereof. To this draft General Counsel added some other reasons. None of them will bear scrutiny. The mortgages had been guaranteed or insured. They complied with the statute and regulations and were therefore eligible. The fact that the mortgages might not be readily marketable was not a reason under the statutes and regulations for FNMA to refuse to purchase. The letter contained the words, "it is not true." Deponent suggested that these words with their implication of falsity be changed. It was no great matter to change it. General Counsel rejected the suggestion. The letter went out with the words unchanged.

Example 4. Under date of September 5, 1954, deponent gave his opinion that a deposit of $625 made by an individual on behalf of certain corporations was in law a deposit by the corporations and that FNMA could retain the sum as belonging to the corporations. But in April, 1952, a contrary opinion was desired and deponent was given the job of writing an opinion reversing himself. In most organizations the writing of such an opinion is given to another attorney. But not so in FNMA. Deponent did not like the job, but did not wish to risk unpleasantness. The trend of events was becoming too evident. He drafted a letter which stated in effect that FNMA did not in October of 1951 have all the facts and authorized the return of the sum of $625.00.

Example 5. Exhibit is a copy of a letter dated June 19, 1952. Deponent is responsible for the first two paragraphs, General Counsel for the last. The second paragraph states that certain work by an attorney was additional work. The last paragraph states in effect that it is not additional work. Inconsistencies of this kind were not infrequent. As it did not affect the result, deponent initialed the letter.

Example 6. Exhibit L hereof is a copy of a memorandum from General Counsel to deponent asking for comments in the Congressional Committee reports on a sec-

tion of a statute. To it was appended a pencilled notation by Assistant-General Counsel:

"Abe: here is an occasion where your work in bringing the 'graphic' account of FNMA legislation down to date should be of assistance. Will you write your reply through me please."

This "graphic" account was only an exact copy of the statutes creating FNMA and of the amendments to date. Deponent did not have to consult committee reports in bringing the "graphic account" up to date. These ill-considered, confused statements frequently came across deponent's desk. Deponent had the job of trying to make sense out of them, of trying to discover what was meant. His questions in themselves would disclose errors in reasoning and incur resentment.

At this point it is appropriate to take up the two incidents mentioned in Charge V. The first incident, as deponent recollects, but his recollection is far from perfect, involved a draft of some paper concerning the 1951-1952 budget. Deponent suggested some changes. Assistant-General Counsel Wilson, after some discussion, excitedly told deponent to stick to the draft he had made and shouted: "That's an order." A few minutes later he returned and was apologetic. Deponent had called to his attention that he had not refused to do anything requiring an order. As to the other incident, there was no question of a change. Assistant-General Counsel Wilson, after giving about three minutes consideration to a draft of a letter on which deponent had labored long, told deponent to shorten it, without pointing out what part was not necessary. The letter had about four paragraphs. Deponent saw no part that could be omitted, and he asked Assistant-General Counsel to undertake the job or to give it to some other lawyer. Assistant-General Counsel undertook the job. The letter which came from his hands was considerably longer.

The examples given demonstrate ignorance of elementary principles of law, lack of training in handling legal prob-

lems, an easy willingness to falsify the record. The resentment is not on deponent's side. It comes from those who have sponsored, authorized, and approved those charges. Deponent was in the unfortunate position of having to show by his opinions, by his very questions, that there had been a misconception of a problem or issue. This does not render a person popular.

Reference has been made to delay. From the beginning of deponent's connections with FNMA, there was unconscionable and unexplainable delay. It is but necessary to look at the date of receipt of a letter and the date of the reply to confirm this. Letters that were not routine required weeks, often months, to answer. Drafts would lie on the desk of deponent's superiors for weeks. At first deponent would give his superior a reminder. After a while he felt that he was making a nuisance of himself, and he decided to say nothing. But finally, when two or three matters would be on his superior's desk and he had nothing to do, he would again give his superior a reminder. It did no good. Drafts would be forgotten, lost or mislaid. Then a call or inquiry would come in from the field and deponent would be asked what had happened to the matter.

Exhibit J, supra, is a draft of a letter dated April 3, 1952. It lay on General Counsel's desk for five weeks. Then came an inquiry from the outside. It was a matter in which Senator Butler and Congressman Rivers were interested. As will be seen from the note to the letter, deponent called attention to the fact that their letters had to be answered. They were not answered until June 4, two months later. A memorandum from General Counsel to Assistant-General Counsel, dated January 29th, was answered by deponent on May 16th. It had lain on a desk, not deponent's, in the intervening time. A letter from Agency-Manager Harris dated January 8, 1952 was answered on March 20th, 1952. Two contracts covering sales of mortgages took a year and a half. They were not long or complicated. On November 8, 1951, deponent addressed a memorandum to his superior, saying, "I think the draft

now is in shape to be sent to the field . . ." On December 28th, deponent addressed another memorandum to his superior stating that he "would like to get your and Bob's O.K. on these agreements and the letter as soon as possible so as to send them out to the Field." Then there was a change from two to four agreements, although deponent expressed an opinion against it. But deponent prepared four agreements, as desired, and addressed a memorandum to his superior on January 24th as follows:

"Attached are two additional forms of Mortgage Sales Agreement, containing a re-purchase provision.

"We now have four drafts of Mortgage Sales Agreement, which I believe are ready to go out. I am awaiting their final approval and instructions as to their numbering. If these are given to me, I am prepared to send them out to the Field promptly with a covering letter."

There is significance to these letters. Deponent wants to get these contracts out of the way. He is trying to get a final O.K. so that no further changes will be made. There had been a year of changes in a simple contract. In the last memorandum he is again reminding his superiors that he is awaiting final approval and instructions. Then there was a change back to the two contracts. Deponent was supposed to be oblivious of this mental confusion and disorganization.

The staff meetings were devoted to discussion of problems and to suggestions for improvement of administration. In March deponent had two or three matters lying on the desk of his superiors. The other attorney in the office was in the same situation. Two calls had come in from the field with respect to these matters. In one matter where there had been a long delay in replying, a gentleman wrote in for an answer, saying that he did not care how his letter was answered so long as it was answered.

Deponent was growing anxious. He has a sense of obligation to the government and the taxpayers. Deponent ventured to discuss the situation at the staff meeting when

it came his turn to speak. He referred to the calls from out of town, to the delays. He pointed to the interest of all to answer promptly letters from the public. Otherwise FNMA would accumulate the ill-will of the public and of business. No one took exception to deponent's statements. The draftsman of the charges was present. If this is criticism, then deponent is proud to be guilty of it. He had no work, yet matters on which he could be working were lying on the desks of his superiors. That day or the next day, the other attorney in deponent's office said that he thought that deponent's talk had done some good. He had gotten back one or two matters that had been on ice for some time. At this meeting deponent also suggested that the operating attorneys be permitted to do the work initially. This, he said, would relieve Assistant-General Counsel and General Counsel and result in getting out the work sooner. But deponent's suggestion came to naught.

Those who read deponent's affidavit will see the significance in the following extract from a letter written by deponent to His Majesty's Civil Service Commissioners at London on July 30, 1951, more than a year ago:

"I am employed as a lawyer by one of the Federal agencies. As a result of my experience in Government employ, I have been prompted to make a study of your Civil Service and would appreciate it if you could send me such material as is available, including copies of statutes."

It was plain to General Counsel that deponent would never take this disorganization, low standards of performance and of ethics as the natural order of things.

It was evidently hoped that the threat of charges at the meeting of July 7th would cause deponent to resign. On July 14th, when the charges were served, the President told deponent that he had the alternative of resigning. General Counsel knew at that time that deponent had been under medical care. Deponent implored the President not to subject him to this ordeal, that he had heart disease, that

he was innocent of the charges. But the President, with a fine show of logic, said that if deponent was innocent, he had nothing to fear therefore, his condition should not be affected.

Deponent now asks the President: Of which of these charges is deponent guilty? Is it the first, in the face of the affidavit of the first stenographer and of the other affidavits showing that deponent was habitually courteous, in the face of the fact that the second stenographer was with deponent for a year and a half, in the face of the accumulated evidence shown, that she was as happy in this job as a girl of her nature could be, in the face of the denials of an attorney of many years standing at the bar with a record of disinterested service for his country and community. Is it the second and third, in the face of the fact that the personal work, moderate in amount, was done with the knowledge and acquiescence of his immediate superior, who will testify to it at the proper time, in the face of the fact that this work was done openly and for so long a time that his superiors are charged with knowledge and acquiescence? Is it the fourth, in the face of the fact that deponent's immediate superior knew that deponent would occasionally prolong the lunch hour when there was nothing to do? Is it the fifth, which in fact does not constitute a charge when it concerns a lawyer in his daily give and take with his colleagues?

Deponent has done nothing to warrant discharge. He is conscious of no act of impropriety. He respectfully asks exoneration from all these charges.

A. Lincoln Green

Subscribed and sworn to before me, this 9th day of September, 1952.

Geraldyne H. Wagner
Notary Public

(Seal)

EXHIBIT A

DISTRICT OF COLUMBIA: SS

Edith A. Smith, being duly sworn, deposes and says:

Deponent has read the charges against Mr. A. Lincoln Green, which refer to the period when deponent was his stenographer. The following are the facts with relation to Charge IIa and Charge IIIa to the best of deponent's recollection:

Mr. Coolidge received a telephone call in November, 1950. Deponent answered: "Mr. Coolidge's office." There was only one telephone wire. Mr. Green said in substance to deponent: "Please answer the phone in my name, as you have been assigned to me". On one occasion, deponent was told by Mr. Green that he did not want deponent to develop a habit of going out regularly for coffee. On another occasion in February, 1951, Mr. Green buzzed for deponent. Deponent did not bring in her stenographic notebook. Mr. Green said in substance: "Haven't I told you to bring your book when I buzz for you. I don't want to tell you again." Deponent left and reported the incident to Mr. Reid and asked for reassignment. Aside from these incidents there were no other incidents of discourtesy. Mr. Green was, except for these incidents, courteous and did not use abusive language to deponent.

With reference to the sorting of personal bills and receipts, and papers, deponent sorted and filed some papers which were in a drawer during the first month and a half that she was with Mr. Green.

Mr. Green informed deponent she should not do any work of a personel nature except when she had no official work to do.

After the first month and a half Mr. Green and deponent moved to another office and we were busier with official work. Deponent did not do any filing of personal work or

any work for Mr. Green except an occasional personal letter.

Sworn to before me this 26th day of August, 1952.

/s/ EDITH A. SMITH

ANNA MARIE GREEN /s/

EXHIBIT B

District of Columbia, ss:

Frances C. Drwal, being duly sworn, deposes and says:

She is a stenographer, employed by the Reconstruction Finance Corporation. For a period of four years, from 1945 to 1949, she worked with Mr. A. Lincoln Green. At the time when she first worked for him, she had been employed as a clerk typist and had had little experience in taking dictation. Mr. Green was patient and spent considerable time in teaching deponent. As a result of a reduction in force, deponent was transferred out of the legal division.

In the four years that deponent worked with Mr. Green, he never used abusive or insulting language. He never said "God damn it to Hell". He acted courteously and with consideration. He never yelled at deponent. He never threw books about in a loss of temper. Deponent never heard him use the words, imbecile or ignoramus. When he called deponent to take dictation, he would say: "Would you please." Deponent never knocked on his desk to call his stenographer. He never said to deponent: "You come here and you come fast." He occasionally dictated a personal letter. She kept his file of personal correspondence, which included a few bills. This was done when the official work was done. He made a few personal calls on the phone. They were never many. Deponent also wrote out personal checks for Mr. Green. There were not many of these in the month.

Mr. Green arrived at the office punctually and rarely, if ever, absented himself. Mr. Green impressed deponent as a gentleman with a high sense of honor and integrity. He was never, to deponent's knowledge, untruthful.

/s/ FRANCES C. DRWAL.

Sworn to before me
this 29th day of August, 1952

/s/ ANNA MARIE GREEN
Notary Public in and for
the District of Columbia

EXHIBIT C

DISTRICT OF COLUMBIA SS:

Charlotte K. Ryan, being duly sworn, deposes and says:

She is employed by the Reconstruction Finance Corporation as secretary to one of the attorneys. Deponent has known Mr. A. Lincoln Green since the Spring of 1945. From about August, 1947 to October, 1949, deponent was in the same office with his secretary, Frances C. Drwal. Deponent has had a good opportunity to observe Mr. Green's conduct and to judge his character. Mr. Green was at all times courteous and polite to his secretary. In deponent's opinion, he is a man of integrity and honor. He was patient, kind and considerate to his secretary and to deponent. Deponent has at various times assisted Mr. Green in a secretarial capacity. There were times when deponent asked his help. He was always willing to help and explain matters that deponent did not understand.

Mr. Green has informed deponent that he has been charged with saying to his present secretary: "You come over here and you come fast." Deponent never heard Mr. Green use the expression or a similar one. She never heard him say: "God damn it to Hell" or go into a rage and use abusive language. She never heard him use the

words ignoramus or imbecile. He was not, in deponent's opinion, arrogant or critical.

/s/ CHARLOTTE R. RYAN

Sworn to before me
this 5th day of September, 1952

/s/ ANNA MARIE GREEN
Notary Public in and for
the District of Columbia

EXHIBIT D

DISTRICT OF COLUMBIA SS:

Arthur Wood being duly sworn, deposes and says:

He is Assistant General Counsel of FNMA, having been appointed to that position on June 8th, 1952. Prior to that time he was one of counsel. Mr. A. Lincoln Green came to FNMA in about April, 1950. During that time he has never called deponent ignoramus or imbecile. He has never heard Mr. Green use these words with respect to other attorney.

On a Friday in June, deponent called Mr. Green into his office and informed him that his stenographer was needed by general counsel for a backlog of work, that this arrangement was temporary.

Sworn to before me this
29th day of August, 1952: [Not Executed]

(Copied from handwritten paper.)

EXHIBIT D1

DISTRICT OF COLUMBIA, SS:

Thomas F. Wilson, being duly sworn, deposes and says:—

He was assistant general counsel of Federal National Mortgage Association to , 1952. Mr. A. Lincoln Green was under deponent's supervision. Mr. Green oc-

occupied the room adjoining on deponent's right for four or five months, prior to deponent's leaving FNMA.

Mr. Green never called deponent ignoramus or imbecile.

Deponent knew that Mr. Green was making telephone calls with respect to the construction of his house and that he occasionally dictated a personal letter to his stenographer. The personal work was not extensive and did not interfere with Mr. Green's official work.

The door between deponent's and Mr. Green's office was generally open. He never heard Mr. Green use abusive language to his stenographer. He never noted any extensive absences.

Mr. Green and deponent had differences on the law. He never refused to do any work that was given to him. He was some times reluctant to make a change. He was in deponent's opinion a capable, thorough lawyer.

[Not Executed]

EXHIBIT E

June 18, 1951

Francis R. Kelly—Assistant General Counsel
A. Lincoln Green
Maribeau Manor

This memorandum is limited to ascertaining from the correspondence whether there is a contract between FNMA and William H. McClendon for legal services and the nature of that contract.

Under date of October 13, 1950, Mr. Reid wrote to McClendon in part as follows:

> "It is my understanding that you are agreeable to a proposal to represent this Association in professional matters and, in that connection, to render such legal services as may be requested by this Association's Agents at New Orleans or by this office. Such services would be related to the business of this Association, which consists of the purchase, administration, and sale of mortgage loans guaranteed by the Adminis-

trator of Veterans' Affairs or insured by the Federal Housing Commissioner. The conduct or supervision of foreclosure activities would be included. Subject to your concurrence, it is our proposal that your services and related facilities be furnished to us on a basis whereby FNMA will compensate you by the payment of a fee to be computed at the rate of $5.00 per hour of your time while you are so engaged. . . .

"If you find the foregoing satisfactory, it is requested that you note your acceptance hereof on the enclosed duplicate copy, which should thereupon be returned to me."

McClendon returned the duplicate with his acceptance. In a separate letter of October 18, 1950, he said that the proposal in the letter of October 13, 1950 is entirely agreeable to him and that as he had performed similar services for RFC, it was gratifying to receive this proposal. The letter when accepted by McClendon constituted a contract.

Under date of October 19, 1950, Justice Greene, Agent at New Orleans, wrote to Mr. Baughman in part as follows:

"The difference between transferring the mortgages to the Commissioner in exchange for debentures, etc. at a discount of 1% and foreclosure by the Association lies in favor of foreclosure as illustrated below.

"The 1% discount on the unpaid principal balance would amount at this time to $13,036.00. Foreclosure costs cannot be actually determined in advance depending on several factors, however, we can establish an outside estimate. Recording fees, court costs and mortgage certificates, etc. may run to $620.00, advertising $1,220.00, Sheriff's fees are calculated on a schedule of 1% on the first $1,000.00, ½% on the next $4,000.00, ¼% on the next $4,000.00, and ⅛% above $9,000.00. Sheriff's fees could, therefore, conceivably run from $412.50 to approximately $1,700.00 in case of competitive bidding.

"The question of whether the property should be sold with or without appraisement (upon which the right of establishing a deficiency depends) would have to be resolved. Without appraisement there would be no appraisal fees. With appraisement, appraisal fees could range from $500.00 to $1,500.00. The cost to the Association for legal services for the Association's

attorney on the contract basis at $5.00 an hour, estimating at the outside 150 hours, would be $750.00. These figures would establish an outside cost for foreclosure at under $6,000.00.

"Counsel for the Association estimates that it will take 60 days from the receipt of authority to foreclose to complete the foreclosure procedure."

McClendon initialed the file-copy of this letter and also received a copy. About November 21, 1950, Greene referred the Maribeau Manor matter to McClendon for foreclosure pursuant to the letter dated November 21, 1950 from Reid to Greene. The letter of November 21, 1950 authorized referral pursuant to the letter agreement of October 13, 1950 and mentioned the fact that after November 30th, the Association's legal work would be handled by the Dallas Office, which was to follow up on the matters in McClendon's hands.

Under date of December 18, 1950, Mr. Reid sent McClendon a letter stating that McClendon had been recommended as one whose services FNMA might utilize for any work in the vicinity and requesting, if he desired to represent FNMA, that he sign and return a copy of the form of agreement that was enclosed with the letter. This agreement read as follows:

"To Federal National Mortgage Association
Washington, D. C.

"The undersigned, in consideration of his employment as attorney for Federal National Mortgage Association (hereinafter called 'Association'), agrees that all fees for services rendered in this capacity will be reasonable (taking into consideration the time consumed, the legal problem involved, but without regard to added responsibility because of the sums at issue) and subject to the approval of Association, whose decision as to such fees shall be final.

"The undersigned agrees that when legal matters are referred to him wherein he is to act as attorney for Association he will immediately advise the General Counsel of said Association of any relation he may have to the adverse party or parties, and, if

either of the adverse parties is a corporation or partnership, he will further advise as to any financial interest he may have in them as shareholder, owner, or partner.

"It is agreed that either the undersigned or Association may terminate this employment at will, and that upon termination, or prior thereto on demand, all papers belonging to Association will be returned to it immediately.

"It is also agreed that the full amount of all collections made will be remitted to Association immediately; the fees incident to the same to be paid in due course."

Under date of December 28, 1950, McClendon wrote to Mr. Reid stating as follows:

"Enclosed herewith are two signed copies of the agreement sent with your letter of December 18th, 1950.

"With respect to the first agreement signed pursuant to your letter of October 13th, 1950, I have assumed that the same aatomatically expired December 1st, 1950 the date upon which the New Orleans Office of the Association removed to Dallas, Texas."

Under date of January 8, 1951, FNMA acknowledged receipt of the two signed copies of this agreement and said in part as follows:

"With respect to the letter agreement executed pursuant to my letter of October 13, 1950, you are correct in the assumption that such agreement expired December 1, 1950, the date upon which the New Orleans Office was transferred to Dallas. However, the rate of compensation will remain unchanged, that is, your services will be on the basis of $5.00 per hour except regarding foreclosures. In foreclosure cases the Association will pay you a fee of $100 in uncontested cases, which fee will cover all services rendered in connection with the foreclosure and in connection with the conveyance of the property to the Federal Housing Commissioner or the Administrator of Veterans Affairs, as the case may be. In the event a foreclosure action is actively contested, or if it is necessary to eject the mortgagor from the premises after foreclosure, or any

service of unusual nature is required in connection with the foreclosure proceeding, an additional reasonable fee will be allowed."

The foregoing letter was a statement of the fees we would pay under the second contract. McClendon so understood. In his letter of February 7th he refers to this letter as an advance interpretation of the second contract.

McClendon replied under date of January 18, 1951 in part as follows:

"This will acknowledge receipt of your letter of January 8th, 1951, confirming that the agreement of October 13th, 1950 expired December 1st, 1950, but affirming, nevertheless, that compensation for my services rendered after December 1st, 1950 should be Five ($5.00) Dollars per hour the same as stipulated in the expired contract.

"That hourly basis figure does not take into consideration an important condition of the expired contract, i.e. the New Orleans Office provided me with office space, experienced expert stenographic service and all other modern office facilities, but none of these have been available since December 1st, 1950, consequently my services now require the use of my own office facilities.

"Prior to 1941 I rendered legal services to RFC from my own office and the hourly rate then was Ten ($10.00) Dollars and I feel that you will appreciate that as of today such a figure is the absolute minimum for routine legal office work, and I suggest that we agree upon that figure as of December 1st, 1950."

In passing it should be pointed out that there is no substance to the argument that the hourly base figure did not take into consideration an important condition of the expired contract, that the New Orleans Office provided him with office space, experienced expert stenographic service, and all other modern facilities, whatever these may be. The letter agreement drawn by Mr. Reid in Washington makes no mention that McClendon was to be provided with office space, etc. In the absence of any agreement to the contrary, he was to perform his legal work in his own office with his own facilities. He was, therefore, not en-

titled to any increase in his remuneration when he performed the work in his own office. The arrangement whereby he used the local facilities of FNMA was one of convenience and not a contractual one. Nor was McClendon's expense increased substantially when he did the work in his own office. It did not add to his rental. He is presumed to have experienced stenographic service and all the facilities necessary to do a job.

To McClendon's letter of January 18, 1951, Mr. Wilson replied stating that Mr. Reid would answer his letter on his return from his vacation. McClendon did not wait for a reply to his letter of January 18th but wrote to Mr. Wilson under date of February 1, 1951 in part as follows:

> "In the meanwhile, I find there are several other features covering attorneys fees which require discussion and clarification and as the facts are complicated, I believe a personal interview with Mr. Reid is the better course, therefore, as I expect to be in New York about the week of the 19th of February, it will be convenient on my return trip to stop in Washington for an appointment (my train leaves Washington about 6:30 p. m.)."

It was between January 18th and February 1st, therefore, that McClendon conceived the notion that he would ask for a "reasonable fee", ignoring the contract of December 27, 1950. He did not pursue his proposal of $10.00 an hour. Under date of February 7, 1951, he wrote in part as follows:

> "Since the most unexpected and somewhat precipitous removal of our office to Dallas my status has been confused and indefinite and I surely would like to clear it up in a full discussion with you. . . .
>
> "The matter of Mirabeau Manor, Inc. in which I presently am conducting foreclosure. Near the end of November after announcement of the removal of the New Orleans Office to Dallas, I was instructed nevertheless to rush the filing of proceedings in time to impound rents due December 1st, 1950. I filed proceedings November 29th, 1950 and since December 1st, I have been conducting this matter continuously under

no written contract, verbal understanding, nor particular instructions except in brief to carry on, in a sort of free lance way. . . .

"The attorney's agreement signed December 27th, 1950 provides that fees shall be 'reasonable'.

"Notwithstanding I have performed no services under that contract, the letter of January 8th, 1951 gives notice—as an advance interpretation—that the phrase 'reasonable attorneys fees' means $100.00 in all except unusual circumstances. Further, that letter extends the scope of the duties of counsel to include conveyance of the property after foreclosure."

McClendon states in the above letter that he has performed no services under the agreement of December 27th. But the agreement covers all legal work referred to him. He cannot unilaterally exclude at will a piece of work and claim that there is an implied agreement for a *quantum meruit*. He could thus void a written contract and substitute another to which we had not agreed. His dissatisfaction with the agreement did not render it void or inapplicable. If he proceeded with the work, it was under the agreement. He could have returned the papers and refused to continue. He did not do this. He expressed his dissatisfaction but continued to handle the matter. He was bound by his written contract.

It is possible that McClendon may claim a verbal agreement, made subsequent to the agreement of December 27th, to pay him a reasonable fee. This is indicated in his letter of May 25, 1951 wherein he says:

"It is my firm conviction that I am entitled to a reasonable fee according to prevailing standards and that any per hour basis is entirely irrelevant; I believe that our exchange of letters beginning with mine of December 28, 1950 establishes that fact; particularly yours of January 8, 1951 and mine of January 18, 1951 and February 7, 1951, outlining the agenda for our conference and treating the hourly basis (but not at $5.00) as a matter distinct from the foreclosure fee and assigning different identifying numbers to each; also your letter of April 4, 1951 stating your intention to 'determine a reasonable fee'."

These conversations and correspondence dealt with the settlement of a controversy over fees. Assuming that they could be considered a verbal contract, there is no consideration. In *Thurston* v. *Travelers' Insurance Company* (*Nebr.*), 258 N. W. 66, 68, the court said:

> "The contract actually made is controlling. That the compensation it provides is inadequate is not appealing to the conscience of this court. An attorney is bound by his contract the same as any other person, even though he may have agreed to act for an inadequate amount or for no fee at all, unless the agreement is made under a mistake of fact which the law recognizes. . . .
>
> "Indeed, as to any attempted modification or substitution of contracts of employment by attorneys, after the relation of attorney and client has been created, the general rule appears to be that an agreement for additional compensation, made after such relationship is established, is presumptively invalid, and unless the agreement embraces the performance of services not contemplated before, it will be void for want of consideration. 6 C. J. 737; 2 R. C. L. 1037, Sec. 120; Ridge v. Healy (C. C. A.) 251 F. 798; Moore v. Rochester Weaver Mining Co., 42 Nev. 164, 174 P. 1017, 19 A. L. R. 830; White v. Polliver, 140 Ala. 300, 20 So. 97; Marshall v. Dossett, 57 Ark. 93, 20 S. W. 810; Shropshire v. Ryan, 111 Iowa, 677, 82 N. W. 1035; Egan v. Burnight, 34 S. D. 473, 149 N. W. 176, Ann. Cas. 1917A, 539; Stern & Swift v. Hyman Bros., 182 N. C. 422, 109 S. E. 79, 19 A. L. R. 844; Hubbard v. George, 81 W. Va. 538, 94 S. E. 974, L. R. A. 1918C, 835."

In "In re Burns" (Idaho) 40 P. (2d) 105, 112 the court said:

> "Though the services rendered by the attorney may be worth more than the amount fixed by the contract, the attorney can recover only the amount so fixed, in the absense of a change in the contract. . . .
>
> "We think the rule in cases of this kind is well stated in Isham v. Parker, 3 Wash. 755, 767, 29 P. 835, 839, to the effect that where an attorney performs any unusual professional services—

"'Where there was no further understanding or request, and where there was nothing to show that it was understood by the client that such services were outside of or in addition to the services provided for by the contract of employment, the attorney should be precluded from recovering in excess of the contract price.'

"'It was the duty of the attorney, at the time these services for which he claims extra compensation were being performed, to notify his client that such services were without the contract of employment, and in the absence of such information he ought not to recover therefor.' Gabriedson v. Gorin, 92 Wash. 408, 159 P. 387.

"The rule holding a person in a fiduciary capacity to the strictest accountability applies to agreements for increased compensation after the confidential relationship is inaugurated.

"'The burden is upon counsel to show that the new contract was fairly made, was reasonable, and that no advantage was taken by reason of the confidential relation existing between counsel and client.' 6 C. J. 737."

Such a verbal agreement covering the work indicated in the written agreement would also be contrary to the parole evidence rule.

The material provision in the agreement of December 27th is:

"All fees for services rendered in this capacity will be reasonable (taking into consideration the time consumed, the legal problem involved, but without regard to added responsibility because of the sums at issue) and subject to the approval of Association, whose decision as to such fees shall be final."

A contract is to be construed so as to sustain its provisions. The requirement that fees shall be reasonable applies to the attorney, not to FNMA. He is enjoined to submit bills for fees which are reasonable. In fixing such fees he is not to take into consideration the added responsibility because of the sums at issue. If the pro-

vision that fees will be reasonable applied to FNMA, then the provision that FNMA's decision as to fees shall be final is nullified. Under the provision FNMA ultimately determines the fee. Its decision is final.

In *Chrichlow* v. *Doepke*, 56 F. (2d) 599, the court said:

> "Appellant agreed to accept such fees as the Comptroller approved, and also agreed that the Comptroller's decision as to the amounts to be paid should be final. In the absence of fraud or bad faith, neither of which is charged, the contract was binding upon appellant. Kihlberg v. United States, 97 U. S. 398, 24 L. Ed. 1106; Butler v. Winona Mill Co., 28 Minn. 205, 9 N. W. 697, 41 Am. Rep. 277."

In *Tennant* v. *Fawcett* 94 Tex. 111, 58 S. W. 824, the court said:

> "The plaintiff in the court below (the defendant in error in this court) sued the defendant (the plaintiff in error here) to recover the reasonable value of certain services as an attorney at law rendered by the former for the latter. The defendant made defense on the ground that the services were rendered under a special contract, in which it was agreed that, in case the defendant should employ the plaintiff, and no fee was agreed upon in advance, the defendant should only be liable for such sum as he himself should fix as compensation for the services; and that he had fixed the amount of the compensation, and had paid the same. The court charged the jury, in effect, that, if the plaintiff rendered the services for the defendant alleged in his petition, and the compensation for such services was not agreed upon in advance, then that they would allow the plaintiff such sum or sums as the services were reasonably worth. We are of the opinion that the charge was erroneous. . . .
>
> "We think the authorities hold that in such a case, should he fix the compensation in good faith, no more can be recovered than the amount so fixed. In Butler v. Mill Co., 28 Minn. 205, 9 N. W. 697, the court say: 'We think the judgment as rendered is correct. The contract was clear and unambigaous. The stipulation that the amount of the compensation should depend

upon the judgment and decision of the employer may have been an undesirable one for the plaintiff to consent to, but he nevertheless chose to accept the employment on those terms. The contract was an entirety, and of obligation in all its parts, and the law cannot, after it has been executed, relieve the plaintiff from the consequences of one of its stipulations which proves to be disadvantageous to him. That would, in effect, be making a new contract for the parties. It was the duty of the defendant to determine and fix the amount of the compensation honestly and in good faith, and, if it did so fix it, the obligation of the contract was fulfilled so far as that matter is concerned.'"

In *Woodbury* v. *Andrew Jergens Co.*, 61 F. (2d) 736, 740, the court said:

"The appellants were forbidden to demand a new contract even if the work proved to be more arduous and extensive than they had anticipated. Chambers v. Gilmore, 193 F. 635 (C. C. A. 9); Holmes v. Evans, 129 N. Y. 140, 29 N. E. 233."

In 7 C. J. S. 1056 it is said:

"An attorney is bound by his contracts exactly as any other person, and, so long as he observes good faith, he will likewise be protected in his contractual rights. Accordingly, where there is a valid agreement fixing the compensation, that alone fixes the rights of the parties and the rate of compensation which the attorney is entitled to receive for services rendered regardless of the value of such services, the court is not concerned with the reasonableness of the fees; the attorney in such case is entitled to recover the amount agreed on. If the creditor and attorney agree in advance upon the attorney's fee, such, if not excessive, is the measure of fee chargeable against the debtor, notwithstanding the contract out of which the debt arose stipulated a specific amount as a reasonable attorney's fee, since such contract is one of indemnity merely, to protect the creditor against attorney's fees to amount stipulated.

"On the other hand, the attorney is limited to the amount stated in his contract, even though he agrees

> to act for an inadequate amount, or for no fee at all, unless such agreement is made under a mistake of fact, or unless payment in accordance with the agreement is rendered impossible by an act of the client and a third person."

The second contract was made on December 27, 1950. It covers the work from December 1st. This appears from McClendon's letter of December 28, 1950, where he says that he is enclosing two signed copies of the agreement and assumed that the first agreement expired December 1, 1950. The second contract was necessitated by the fact that the first had expired. The second was intended to govern the relations of the parties from the time that the first had expired. This appears also from McClendon's letter of February 7, 1951, wherein he says in substance that the fixing of fees in our letter of January 8th was pursuant to the agreement of December 27th and applied to the period beginning December 1st.

If by chance it is held that there was no written contract for a period from December 1st, that period would end when McClendon received the second agreement or at the outside when he signed it on December 27th. In such case the first agreement would be admissible in evidence as showing what the parties themselves considered a reasonable fee. 7 C. J. S. 1121. In *Bryant* v. *Browning* (Tex.) 48 S. W. (2d) 798, 799, the court said:

> "Though the contract is not in itself a criterion of the value of the services rendered by appellee, it was admissable on that issue as evidence of what the parties themselves at the time considered a reasonable charge for the services contemplated. Wright v. McCampbell, 75 Tex. 644, 13 S. W. 293; Davis v. Webber, 66 Ark. 190, 49 S. W. 822, 45 L. R. A. 196, 74 Am. St. Rep. 81; 2 R. C. L. 1060; 40 A. L. R. 1529, note; McGowan v. Parish, 237 U. S. 285, 35 S. Ct. 543, 59 L. Ed. 955."

It is unnecessary to consider the letters from attorneys, submitted by McClendon, as to the reasonable value of his services. These and his claims as to the arduous nature

of the work are relevant only where he is entitled to recover a reasonable fee. They are irrelevant, as the cases show, where there is an express contract which fixes his fee or permits the client to fix the fee. In passing it may be said that a foreclosure of this type is always time consuming but the work entailed is not extraordinary or unusual. Nor do I see that any difficult legal problems were encountered. The foreclosure was by default. His basic complaint is that the contracts, which he had signed with open eyes, gave him a fee that he now considers grossly inadequate.

In conclusion the first contract governs the relations of the parties to November 30, 1950. The second contract governs the relations of the parties from December 1, 1950. FNMA under the express terms of that contract may determine the fee for work done from December 1, 1950. In the absence of fraud or bad faith such determination is conclusive.

A. LINCOLN GREEN

EXHIBIT E1

July 6, 1951

Robert Newton Reid—Vice-President and
General Counsel
A. Lincoln Green
Mirabeau Manor, Inc.

You will recollect that under date of June 21st we wrote McClendon giving him until June 29th to accept our offer of $7,000 in settlement of his claim for fees and informing him that if we did not receive his unqualified acceptance by that date, we would assume that he had rejected our offer and we would proceed to fix his fee in accordance with the agreements for his services. We have not heard from McClendon. McClendon gave us a summary of his services. This appears to be exaggerated and vague. For instance, as part of his services he records the three days that he spent in Washington "for the purpose of discussing many

details of this transaction." With a view to enabling you to fix McClendon's fee I asked Mr. Wood and Mr. Coolidge to go over the summary of services and to estimate the number of hours, leaning to the liberal side. I also prepared my estimate. The estimates are as follows:

Mr. Green	226 hours
Mr. Coolidge	337 hours
Mr. Wood	426 hours

The average of these figures is 330 hours. You will recollect that McClendon wrote us under date of January 18, 1950, suggesting that we agree upon a figure of $10.00 per hour. If we paid him at the rate of $10.00 per hour his fee under the contract of December 18th would be $3,300.

He appears to have done some work under the contract of October 13, 1950. The matter was referred to him some time after November 21st. He states in the summary of services dated March 30, 1951 that suit was filed on November 29, 1950, although his first entry for services is December 4th. If we credited him with 40 hours at $5.00 per hour under the contract of October 13th, he would be entitled to $200. The total fee on the basis of $10.00 per hour from December 1st and $5.00 per hour prior thereto would be $3,500.

It is my thought that you would want to consider the foregoing facts and figures. Attached is a proposed letter.

A. Lincoln Green.

Attachment

EXHIBIT F

Date: June 6, 1951

Standard Form No. 64
OFFICE MEMORANDUM UNITED STATES GOVERNMENT
To: Mr. Green—Room 860
FROM: Francis R. Kelly

SUBJECT:

Facts: An attorney in Louisiana contends that he is entitled to a fee of $22,000.00 for services rendered in foreclosing a 608 mortgage consisting of ten real estate mortgages and ten chattel mortgages. In addition to the foreclosures the attorney did considerable management work, had a receiver appointed and about $20,000 in rents were collected through such proceeding. The attorney was retained by FNMA under an arrangement where he would be provided with office space, stenographic and other help as required, stationary, telephone service, etc., and a fee of $5.00 an hour. He undertook the work on this basis but shortly after entering on duty the New Orleans Office was moved to Dallas and the Attorney was left to his own resources to conclude the foreclosure; which he did. About three weeks after the closing of the New Orleans Office the Attorney signed our usual form of "Attorney's Agreement". We have offered the Attorney a fee of $7,000 and regard it as more than adequate.

Question: What Louisiana law of Attorney and Client, particularly with regard to the payment of compensation is applicable to the above facts?

(signed) FRANCIS R. KELLY

EXHIBIT G

June 21, 1951

Wm. H. McClendon, Jr., Esq.
McClendon and Wheeler
Richards Building
New Orleans 12, Louisiana

Re: Mirabeau Manor, Inc.

Dear Mr. McClendon:

Delay in replying to your letters of May 25 and June 12 respectively has been occasioned because of the time involved in having completed a reanalysis of the files in the captioned matter. Such further study of the files induces the conclusion that your compensation for services rendered the Association in the captioned matter must be governed by the contracts that controlled the rendition of the services.

As to services rendered up to and including November 30, 1950, your compensation is determined by the letter agreement of October 13, 1950. This agreement fixes your fee at $5.00 per hour. Under the second agreement dated December 27, 1950, covering the period subsequent to November 30, 1950, our determination of the fee is final. With a view to settling this matter we made an offer to you in our letter of May 9, 1951 of $7,000 in full settlement of your claim for fees.

In view of our conclusion that your fees are governed by the written contracts above referred to, we have decided that we cannot further prolong the matter. Hence our offer of $7,000 shall be regarded as withdrawn unless accepted by you on or before June 29, 1950. If we do not receive an unqualified acceptance of our offer before June 29, 1950, we shall assume that you have rejected the same. In this event we shall proceed to fix the fee in accordance with the contracts.

In several of your letters you have expressed a desire to avoid litigation. It was solely for this purpose that we

made our $7,000 offer of settlement for we too feel that the question of the determination of the fee is not so complicated that litigation is a necessary expedient to its settlement. Your favorable consideration is therefore solicited.

This letter is written without prejudice to the rights of Federal National Mortgage Association in the premises.

Sincerely yours,

(signed) ROBERT NEWTON REID,
Robert Newton Reid
Vice President and General Counsel

FRK:als
cc:
Messrs. Baughman, Reid, Kelly, Coolidge, Wood, Green

EXHIBIT H

July 6, 1951

FNMA Files
R. N. Reid
Mirabeau Manor, Inc.
McClendon Fee

I have made an independent inspection and study of the files in this case and have arrived at my own estimate as to the number of hours spent by Mr. McClendon as disclosed by his summary of services. The figure arrived at is less than Mr. Wood's estimation of 426 hours. Mr. Green estimated 226 hours, and Mr. Coolidge estimated 337 hours. In the interest of liberality I accept Mr. Wood's figure of 426 hours. In addition, I feel that an additional 24 hours should be allowed for the time spent by Mr. McClendon in Washington, which was not included in Mr. Wood's calculation.

Also, Mr. Wood did not make ony allowance for other work performed by Mr. McClendon which Mr. McClendon stated was not included in his memorandum. Again in the interest of liberality, I have allowed 50 hours for those

services not specifically set out in his memorandum, making a total of 500 hours, which at $10.00 an hour would come to the figure of $5,000, which I determine to be a reasonable fee in this case.

The original agreement with Mr. McClendon was for $5 per hour and the Association was to furnish office space and stenographic assistance. However, on December 1, 1950 the office was moved to Dallas. Since the work performed by Mr. McClendon after December 1, 1950 was not in the Association's office, I have made an additional allowance of $5 making the rate $10 per hour.

JKC: atn

cc: Messrs. Baughman, Reid, Wilson, Green, Coolidge

EXHIBIT I

MEMORANDUM

Re: Exemption of FNMA From the Payment of Fees and Costs.

The question as to the exemption of Governmental instrumentalities from liability for fees and costs in connection with litigation filed in the Federal Courts, has been considered in a number of cases and the general rule has been followed that in the absence of a statute directly authorizing it, the courses could not enter a judgment against the United States or Federal instrumentalities for costs or expenses. *U. S.* v. *Chemical Foundation*, 272 U. S. 1; *U. S.* v. *Worley*, 281 U. S. 339.

In the case of *Defense Supplies Corporation* v. *U. S. Lines*, 148 F. 2d 311, 326 U. S. 746, it was held that an agency of the United States Government in which the U. S. has a proprietory interest, is exempt from the payment of costs. And to the same effect was the case of *Federal Deposit Insurance Corporation* v. *Casada*, 106 F. 2d 784, 792, where it was held that since the Federal Deposit Insurance Corporation was a Governmental Agency, costs could

neither be awarded in its favor nor against it in this action, pursuant to paragraph (d), Rule 54, Federal Rules of Civil Procedure for District Courts.

It appears, however, that the exemption doctrine aforementioned was questioned in the case of *RFC* v. *New Castle Terminal Company*, 31 Fed. Supp. 964 decided on March 12, 1940, and in the case of *RFC* v. *Menihan*, 312 U. S. 85 decided on February 3, 1941. In both of these cases the Court held that the RFC was subject to the payment of court costs, in view of the fact that there was no general or specific exemption provided by law as to the liability of the RFC for the payment of fees and costs.

A general exemption as to the payment of fees and costs was provided by an Act of Congress on August 2, 1946, Chapter 753, section 410(a), 69 Stat. 843 (Title 28, section 2412(a) USCA which is as follows:

> "The United States shall be liable for fees and costs only when such liability is expressly provided for by Act of Congress."

As pointed out in the note to this section:

> "Subsection (a) is new. It follows the well known common-law rule that a sovereign is not liable for costs unless specific provision for such liability is made by law. This is a corollary to the rule that a sovereign cannot be sued without its consent. Many enactments of Congress relating to fees and costs contain specific exceptions as to the liability of the United States. (See for example, section 548 of Title 28 U. S. C., 1940 ed.). A uniform rule, embodied in this section, will make such specific exceptions unnecessary."

Also under Title 28, section 2408, there is the additional exemption as to security for damages and costs:

> "Security for damages or costs shall not be required of the United States, any department or agency thereof or any party acting under the direction of any such department or agency on the issuance of process or the institution or prosecution of any proceeding."

Rule 54(d) of the Federal Rules of Civil Procedure for District Courts is in harmony with these two sections of the statute and provides as follows:

> "A further restriction confines the imposition of costs against the U. S., its officers and agencies to those expressly allowed by law."

Since the enactment of the statute aforementioned, the Supreme Court has had occasion to pass upon this question again, and in *Ewing, Federal Security Administrator* v. *Gardner*, 341 U. S. 321 decided on May 7, 1951, the Court held that under Title 28, section 2412(a), costs may not be assessed against the Federal Security Administrator in a suit brought against him in his official capacity, in view of the fact that there is no express statutory authority for the allowance of such costs.

It has been uniformly held that when the National Government lawfully acts through a corporation which it owns and controls, those activities are Governmental functions entitled to whatever tax immunity attaches to those functions when carried on by the Government itself through its departments. (*N. Y. ex. rel. Rogers* v. *Graves*, 299 U. S. 401; *Smith* v. *Kansas City Title and Trust Co.*, 255 U. S. 180; *Fed. Land Bank* v. *Crossland*, 261 U. S. 374.) In view of the fact that FNMA is a "wholly owned Government Corporation" as defined by Title 31, section 846 of USCA, it would be entitled to the statutory exemption aforementioned as to the payment of fees and costs in connection with litigation which it may institute or to which it has been made a party defendant.

MILTON GORDON.

Dated: March 25, 1952.

EXHIBIT J

DRAFT—ALG:ese—4/3/52

TO: Campbell—Agency Counsel—FNMA—Atlanta
FROM: Reid—FNMA—Washington
SUBJ: Purchase of Mortgages on Leaseholds

We have your informative letter of March 27th on the subject of purchases of mortgages on leaseholds and appreciate the information you have given us on various legal aspects of the problem. We realize that mortgages on leaseholds may not be as readily marketable as mortgages on the fee, because of the unfamiliarity of prospective purchasers with this kind of security. The statutes, however, authorize the guaranty, insurance and purchase of mortgages on leaseholds. Congress contemplated and intended that mortgage loans on leaseholds should be purchased. In view of this fact we believe that the unfamiliarity of prospective purchasers with this form of security would not warrant us in refusing to purchase. If the mortgage on the leasehold fulfills the requirements of the statutes and regulations, we are of the opinion that the mortgage is eligible for purchase.

We would appreciate it if you would give favorable consideration to our suggestion that the Aiken Loan & Security Company and other parties in the same position, with whom you may have corresponded, be informed that it has been determined, in the light of additional information received by you, that mortgages on leaseholds are eligible for purchase if they otherwise conform with the applicable statutes and regulations.

ROBERT NEWTON REID
Vice President and General Counsel

Bob: After sending a letter to Campbell we shall have to reply also to Congressman Rivers' letter of March 17th and write Mr. France of Venable, Baetjer and Howard; in accordance with letter from Senator Butler of March 25th and our letter of March 27th to Senator Butler.

EXHIBIT K

June 3, 1952

Joseph France, Esq.
Messrs. Venable, Baetjer and Howard
1409 Mercantile Trust Building
Baltimore & Calvert Streets
Baltimore 2, Maryland

Re: Mortgages on leaseholds:
North Charleston, South Carolina

Dear Mr. France:

Your letter of March 18 to Senator John Marshall Butler was forwarded to us for reply. Subsequently the subject matter has been investigated and studied.

Although it is not true that FNMA "is required by law to buy an FHA approved mortgage on a rental unit because there are no purchasers," FNMA is authorized by law to purchase such a mortgage in certain circumstances, subject to its own regulations or requirements.

In complete contrast to the situation in the Baltimore area, it is our understanding that mortgages on leaseholds in the area of North Charleston, South Carolina, are an innovation. Some question has been raised whether at this time their introduction into South Carolina may not be at odds with the current Federal mortgage credit restrictions, in that the initial payment of a purchaser-mortgagor is less when a leasehold is created. Another factor that affects the exercise of FNMA's discretion is that mortgages on South Carolina leaseholds would be, we are certain, less readily marketable than mortgages on South Carolina fee simple estates, whether the housing is sales-type or rental-type.

FNMA does not have unlimited funds. It endeavors to use its funds, in so far as possible, in the purchase of mortgages that in due course will be reasonably saleable, so that by rotation funds will become available to assist again by the purchase of other mortgages.

In summation, FNMA must decline to purchase the type of residential property mortgage, as described in your letter, unless the security is a fee simple estate.

Very truly yours,

(signed) J. S. Baughman
President

ALG:RNREID:emk

cc: Messrs. Baughman, Reid, Tyler, Green, Wood, Greer, Atlanta, Campbell, Atlanta.

EXHIBIT L

Standard Form No. 64

OFFICE MEMORANDUM — UNITED STATES GOVERNMENT

Date: March 3, 1952

To: A. Lincoln Green

FROM: R. N. Reid

SUBJECT:

As you know, section 305 of the National Housing Act states that FNMA "shall have power to . . . sell for . . . credit . . . any property acquired by it as a result of foreclosure proceedings or otherwise.

I should like to know what comments the Committees of the Congress may have made in their reports *at the time the "credit" language was introduced into the statute. That time was fairly recent*, according to my recollection. I have just noticed in FNMA Bulletin 97, paragraph 7, that "Property owned by FNMA must be sold on a cash basis only . . ." which helps to fix the time feature.

(signed) R. N. R.

(Penciled handwritten note):

Al e: Here is an occasion where your work in bringing the "graphic" account of FNMA legislation down to date should be of assistance.

Will you route your reply through me please?

(signed) T. F. W.

Letter of Notice of Discharge, September 19, 1952

September 19, 1952

Mr. A. Lincoln Green
Federal National Mortgage Association
811 Vermont Avenue, N. W.
Washington 25, D. C.

Dear Mr. Green:

You have previously been informed that the statement of charges of July 14, 1952, delivered to and received by you on that date, constituted notice of proposed adverse action, in accordance with section 14 of the Veterans' Preference Act of 1944; and that the proposed adverse action was discharge. Under date of September 10, 1952, you were notified that the proposed effective date of the proposed adverse action had been extended to September 19, 1952, at the close of business on that day.

Your answer, filed September 9, 1952, and other affidavits and exhibits, and all other memoranda and evidence submitted by you, have had careful consideration by me and by the Chairman of the Board. I am authorized to notify you that the decision is that the charges are sustained, and that your discharge will be for such cause as will promote the efficiency of the service, as provided in section 14 of the Veterans' Preference Act of 1944, as amended.

Accordingly, you are hereby notified of the adverse action of discharge and that the effective date thereof is September 19, 1952, at the close of business on that day, at which time your employment by Federal National Mortgage Association will terminate.

As of September 19, 1952, at the close of business, you will receive any net amounts due you for unpaid salary, etc., and a lump sum payment for any net annual leave then remaining to your credit.

In accordance with the provisions of section 14 of the Veterans' Preference Act of 1944, you may appeal from this adverse decision to the U. S. Civil Service Commission. Such appeal must be filed within ten days after the effective

date of the adverse decision. The appeal shall be in writing, and (1) shall set forth in detail all the facts and circumstances of the adverse decision; (2) shall be accompanied by copies of the charges, answer, affidavits in support of answer, and notice of the adverse decision, and by such documentary evidence in support of the appeal as you may wish to submit; (3) shall state whether you desire to make a personal appearance or an appearance through or accompanied by a representative before a representative of the Commission; (4) shall be supported by acceptable evidence of entitlement to veteran's preference; and (5) shall set forth detailed information regarding your status, such as the date and nature of your appointment. The appeal should be addressed to the Chief Law Officer, U. S. Civil Service Commission, Washington 25, D. C.

Very truly yours,

(Signed) J. S. BAUGHMAN
J. S. Baughman.
President

I certify that the original letter, of which the foregoing is a true copy, was delivered by me personally to Mr. A. Lincoln Green this September 19, 1952, at 2:45 P. M. EDT.

(Signed) J. ARTHUR WOOD

A CERTIFIED TRUE COPY:
P. J. SADOTI
Acting for Harrison E. Meyer
Personnel Officer

Letter of Appeal to Civil Service Commission

MURDAUGH STUART MADDEN
ATTORNEY AT LAW,
1000 HILL BUILDING
WASHINGTON 6, D. C.

September 29, 1952

Mr. L. V. Meloy
Chief Law Officer
United States Civil Service Commission
Washington 25, D. C.

Dear Mr. Meloy:

This is an appeal under Section 14 of the Veterans Preference Act of 1944 as amended.

This is to inform you that A. Lincoln Green appeals from the decision of J. Stanley Baughman, President of the Federal National Mortgage Association, discharging him from his position as an attorney in the grade of GS 13. The decision is dated September 19, 1952 and was delivered on that day. The effective date of discharge is also September 19, 1952.

The charges are set forth under five headings. With the object of obviating the necessity for a hearing, it is respectfully requested that the Commission consider and render a decision at this time on the following points of law.

1. All of the charges, without exception, are fatally defective in that they fail to state reasons specifically and in detail.

2. Some of the alleged charges are not in fact charges in that they do not state facts which constitute "cause" for removal.

3. Such charges as may be found not to be defective are not of that grave character which would justify the drastic remedy of discharge, especially in the

case of a disabled veteran with more than fourteen years of accredited service and with disabilities that now make it difficult if not impossible for him to obtain and hold a position outside the government.

The defects in the charges shall be briefly pointed out, but the Board is respectfully requested to keep in mind throughout its consideration of this proceeding that no question of immorality, criminality, unethical conduct, loyalty or alcoholism is involved.

Charge Ia alleges that the appellant was rude and discourteous and used severe and abusive language toward his stenographer. Not a single fact is stated to support the charge. The statute requires reasons and reasons stated "specifically and in detail". Where the reasons are acts committed by the employee, the charges must set forth the acts specifically and in detail. Rudeness and abusiveness are not acts but characterization or judgments of acts. It is the province of the judge to make this judgment and he can do so only when the facts are stated.

Without a statement of facts, the employee is not apprized of the charges he must meet. Only when he is so informed can he know what evidence he must produce to defend himself adequately.

In a proceeding of this nature a statement of facts is indispensable. It is even more necessary than in a court proceeding where the allegations must be proved and the proof is submitted to the test of examination and cross-examination. Yet, even in a case in court the pleadings must state facts. There is more at stake here than in the average case in court. It is the very livelihood and future of the employee.

Without the requirement that the charges state facts specifically and in detail, there is no safeguard against concoction and falsification. Indeed a premium is placed

upon falsification. The proponents by reckless charges merely increase the employee's burden of proof and render it more difficult for him to clear himself. The words, "specifically and in detail" require a full statement of facts. The employee cannot call for a bill of particulars.

A general charge of rudeness and discourtesy cannot by its very nature be a compliance with the statute. To meet this charge the employee would have to account for every act committed by him in the presence of his stenographer during the period involved and would have to show that the acts were not discourteous or that his language was not abusive. This is impossible.

It should be pointed out that the requirement that charges state facts does not depend solely on the statute. It is an elementary principle of justice, at least of American justice, that in a proceeding that is judicial in its nature the charges must state facts. Indeed the proceeding is judicial only because it is a proceeding to ascertain and weigh facts. In the absence of such facts, the proceeding is no longer judicial. Throughout the length and breadth of the charges, there is a marked absence of facts, surprising when it is considered that the charges were drawn by attorneys trained to deal in facts. Careful attention has been devoted to the multiplication, division, and subdivision of accusations, but no attention to the production of hard facts. One instance is the division of one act or course of conduct into Charges II and III and the further subdivision into periods of time and into varieties of personal use of the stenographer. The reason is, of course, that there are no facts.

That the stenographer in Charge Ia was made to cry and threatened to resign as a result of the alleged abusive language is immaterial and irrelevant and has no place in the statement of charges. An act does not become more or less a cause for discharge if the stenographer cried or did not cry, if she threatened to resign or did not threaten to resign. Nor is a stenographer's tears necessarily proof that the language used was in fact abusive.

In Charge-Ib, the appellant is accused of an "attitude", which is characterized by a string of adjectives, "distasteful and unpleasant, insulting, rude, harsh and abrupt". Appellant is accused of being frequently illtempered. The words, frequently and numerous, occur in the other charges. On two occasions appellant is said to have thrown a small telephone book toward the stenographer. The dates and surrounding circumstances are not set forth. It is obvious that these incidents and the utterances attributed to the appellant did not occur in a vacuum. They have been torn from their context. There is no fact that will refresh the memory of incidents that occurred as long ago as February, 1951. This charge has the same defects as Charge Ia.

It will be noted that the incidents in Charge I as well as the other charges go as far back as November, 1951. If the proponents had a basis for charges at the time the acts were committed, can they hold the charges in reserve to suit their convenience or hidden aims. And for how long? For a year or more until the employee has either destroyed his records or no longer recollects the incident?

It is evident from the absence of dates that no contemporaneous written record was made of the incidents referred to in the charges. This is the reason for the absence of details. It is submitted that charges that depend solely on memory for their trustworthyness can never be definite or specific as contemplated by the statute.

If the Commission holds that those in authority may base charges on incidents no matter how old, the job of an employee may be placed in jeopardy at the will or whim of his superior. It is submitted that when the proponents allow a reasonable time to elapse without bringing charges, the conclusion is warranted as a matter of law that they did not consider the incidents of such gravity to justify charges. They are either estopped or have waived the bringing of charges based on such incidents.

The utterances attributed to the appellant do not furnish basis for dismissal. An employee should not say: God dam it to Hell, why can't you do things right? but this does not make such a saying a "cause" for removal.

The last item in this charge is an accusation that appellant was critical and arrogant. As evidence of arrogance and the critical spirit, it is alleged that the appellant called his co-workers ignoramus and imbecile. Here the Commission clearly should expect that dates, facts and circumstances would be recited. The words are slanderous. Addressed to a lawyer, they hurt and hurt deeply. What lawyers did he address by these ignominious terms? When? What are the surrounding circumstances? On its face this charge is neither specific nor detailed. It is incredible.

Charges II and III are the same. The appellant is accused of making a personal use of the stenographer and the office facilities. The various ways in which he is alleged to have made the use are set forth. This use began in November, 1950. It is virtually impossible for such use to continue for such a length of time without the knowledge of his superiors. And if there was knowledge and there is no allegation that he was warned to cease, then there was acquiescence. This acquiescence follows both as a matter of law and common sense. Where there is acquiescence there can be no basis for a charge. Finally, and most important, was it excessive considering the customary use by government officials and employees of their help?

The charge does not set forth facts to show the extent of the use. The word, numerous, is used. It is no substitute for facts. How many letters did she typewrite, how many checks did she make out, how many telephone calls did she make? These charges could be equally made of an employee who had not made a single telephone call or dictated a single personal letter. He would have no means beyond a general denial of disproving them.

Is the charge that any personal use is ground for dismissal or an excessive use? If it is the excessive use, then is not an allegation that the appellant was warned to cease the excessive use essential? There are other allegations in this charge, but they follow the usual pattern. No facts. It is said that this personal use consumed three quarters of the time of the stenographer. This is patently false and incredible. It should be remembered that no warning was given or even alleged concerning this practice.

In Charge IV appellant is accused of taking unauthorized absences over a period of "six or more months", "frequently", "daily", for "at least two or more hours". It is evident from the lack of definiteness that there is no written record of the absences. There is no allegation that he was warned of these absences. There is evidence that no office practice was violated in this respect. If this charge is specific and detailed, then an employee has the burden of accounting for his time for every day of the period mentioned. It is certain that he cannot. A decision finding him guilty is assured in advance.

Charge V is not only destitute of facts but on its face is not in fact a charge. An attorney may argue. He can be unwilling and may even refuse to make a change of fact or law. He is personally responsible for his opinions and cannot plead the directions of his superior to exonerate him.

The following quotation is pertinent to this matter. *Deak* v. *Pace, 185 Fed. (2d) 997* of the Circuit Court of Appeals, District of Columbia Circuit, said:

> "We think that in keeping with the plain terms of the statute and the Secretary's order the information should be sufficient to inform the employee with reasonable certainty and precision of the cause for his removal. Only then can he upon receiving the information, take full advantage of the right granted by the statute to "submit within thirty days thereafter, such statements or affidavits, or both, as he may de-

sire to show why he should be retained and not removed. To avail themselves of the right, it is important that appellants be informed of the dates, places and organizations referred to in the stated reasons for reinstatement which the statutes hold out to them. They are deprived in large measure of the right to clear their names and appeal for reinstatement. To what specific thing could appellant's statements or affidavits be directed beyond their own general denials? Yet, with the specifications indicated, convincing proof might be obtainable to show their innocence."

The foregoing applies with greater force to the instant case. The *Deak* case was a loyalty case where the right to the facts, specifically and in detail, is restricted.

The statement of charges is fatally defective in failing to allege reasons specifically and in detail as required by Statute.

In closing, three final matters would like to be brought to the attention of the Board:

(a) The general rule of procedure and practice to the effect that there must be like punishment for like offense must prevail in this case if the adverse decision is to stand, and it is submitted that such equal treatment would be both impractical and impossible under the facts of this case and the harsh disciplinary action effected hereunder.

b. That the decision on these matters of procedure and law be expedited since the employee in this case has been discharged and has no means of earning a living during the pendency of this appeal, and

c. That the appellant is suffering from heart disease and has been under medical care for hypertrophic arthritis, progressive, of the lumbar spine since June 2. A hearing is an ordeal that can affect his condition. For this reason we have made this effort to show that the charges on their face are completely lacking in facts and fail to comply with the statute. It is respectfully submitted that the decision of the President of FNMA should be set

aside and that the appellant should be restored to duty, as of the date of his discharge with pay and other rights pertaining to his employment.

In the event that this appeal cannot be favorably determined on the basis of this memorandum, it is submitted that a personal appearance before the commission is desired.

Respectfully submitted,

MURDAUGH S. MADDEN
Attorney for A. Lincoln Green
1000 Hill Building
Washington, D. C.
Metropolitan 6565

A. LINCOLN GREEN
1305 Key Drive
Alexandria, Virginia

Letter from Green to Meloy, December 19, 1952

A. LINCOLN GREEN
1305 KEY DRIVE
ALEXANDRIA, VIRGINIA

December 19, 1952

Mr. L. V. Meloy
Chief Law Officer
U. S. Civil Service Commission
Washington 25, D. C.

Dear Sir:

I have your letter of November 18th. First, may I explain that the hearing scheduled for November 26th was not postponed because of my request that the letter of charges be re-examined. Shortly after receiving the letter fixing the hearing date, I telephoned Mr. Welch that I could not go into a hearing because the charges were not specific and in detail, as commanded by the statute, and because they deprived me of my right to defend myself. I informed him that I was making application to the

court for relief. If the court finds in my favor there will be no hearing on these charges. I asked Mr. Welch to take the case off the calendar pending the decision of the court. He asked me to confirm by letter. My letter of November 17th was that confirmation. No definite period for postponement was discussed, as it was evident that the only postponement appropriate was a postponement that would permit the court to pass upon the issue in advance of the Commission's hearing. I asked your re-examination in the meantime of your "prima facie" decision with respect to specificity and detail so as to avoid court action if possible.

The last sentence of your letter is also puzzling. There never was any question of my intentions. It was re-emphasized when you brought up the matter of resignation at our last meeting. This did not appear warranted by anything that I had said. I am prosecuting the appeal. A request for a postponement pending decision of the court does not contradict that determination, quite the contrary. I should like to obtain the postponement by consent. Otherwise I am forced to make application to the court for an injunction. This would add to my financial burden without reason or purpose, unless there is a fixed purpose to foreclose my right to have the issue determined by the court. It is hazardous for me to risk a hearing on the present indefinite and general charges. No court would stand for any attempt to force me into such a hearing before it had had an opportunity to hear me. And especially where it is hard to see in what way you are harmed or what interest there can be in forcing a hearing before the court can decide the question.

My stand is not new. Just the contrary. Nine days after receiving the charges, I pointed out the defects to the signer, item for item, in my letter of July 23rd, of which you have a copy, and indicated that I would have recourse to the courts. If a hearing is held on these charges it might well be said that the presentation of evidence was a waiver of my objections or that the defects were cured by a decision on the merits.

It may be that your apparent feeling that there should be a hearing on the merits stems from your opinion, as indicated at one of our meetings, that I am obliged to exhaust the administrative remedy. But this is for the court to decide. I have no fear on that score, however, for the courts in this and other districts have recognized that in a case of dismissal the veteran need not exhaust the administrative remedy where his statutory rights are violated.

I turn to another matter. In your letter you state that a "prima facie" finding is made that the charges meet the requirements as to specificity and detail, that the matter will be covered more fully in the final adjudication of the appeal. This procedure is gravely prejudicial and is contrary to the procedure which you indicated would be taken. The issue of specificity is determined solely from a scrutiny of the charges. No hearing is necessary, helpful or relevant. To postpone a final decision to the hearing where the issue becomes confused with irrelevant issues involving the merits is prejudicial. To submit myself to a hearing of this kind can do me no good and subjects me to great risks.

This refusal to make a definite decision now is all the more surprising when I recollect that you stated in answer to my query that the issue of law would be determined first, that the Commission had no desire to hold hearings where the determination of an issue of law might make a hearing unnecessary. When I brought this to your attention, you asked whether this had not been done. I said that it had not been done and I asked you to re-examine the matter personally to obtain a definite decision. You said that you would tell me one thing, that you were not going to reverse your subordinate. This is unsatisfactory. I start with two strikes against me, rather three. For it indicates a reluctance to change a position even where it is pointed out that the position is clearly wrong. In this connection I asked particularly that you study my letter of July 17th to the signer of the charges. This was in fact a

memorandum of seventeen pages pointing out item for item the defect in the charges. This was on the afternoon of November 17th. Your letter is dated November 18th.

The postponement of a final decision on specificity and detail is prejudicial for another reason. When those sitting in judgment believe that they will have another opportunity to pass upon a matter, it is obvious that they will not initially give it the consideration it deserves. If they did there would be no need for a final decision.

There is no such thing in the law as a "prima facie" decision on a motion or application addressed to the pleading or charges. It must be definite and decisive. It must be decided *before* the hearing on the merits. For the question on such a motion or application is whether there shall be any hearing at all on the pleading or charges, as stated. How then can it be postponed to the hearing? There is no authority or precedent for holding a hearing while such a motion or application is pending. A person charged with a paltry misdemeanor has the right to a prior determination of the question whether the charge is definite and certain, whether the accused is apprized of the issues he must meet. In this case my livelihood is at stake. If it be said that I am assimilating the practice and procedures of an administrative agency to that of the courts, the answer is that there is no difference where fundamental rights are concerned, and the right to know with certainty what is charged, what issues he must meet, is axiomatic.

I have heart disease and hypertrophic arthritis of the lumbar spine, progressive, for which I have been treated since June. If a decision of the specificity of the charges comes at the end of the hearing in my favor, I have been subjected needlessly to the burden and anxieties of a hearing, forgetting for the moment the expense. Let no misinterpretation be placed upon my words. I want no favors, I need none. But common consideration and humanity where I ask for no partiality and no favors, I have a right to expect. I ask for a decision on the question of the spe-

eficity and detail of the charges, not at the hearing when it comes too late but *now*.

You are interested in disposing of this matter expeditiously, consistent with the right of the accused to defend himself fully. To that end I assure you that you will have my cooperation. Indeed, I must be expeditious. I depend upon my employment for a livelihood. And I have been expeditious. I had the complaint with me ready for filing on November 17th when I spoke to you. On the possibility of a favorable decision I withheld filing until receipt of your letter on November 20th. On the following morning, November 21st, a Friday, it was given to the marshall and served on November 24th. I am even now drafting my memorandum on the motion for summary judgment, although the defendant has sixty days to answer. I am attaching an extract on a point that was not as well covered in the papers I have heretofore submitted to you.

In view of the fact that you have not yet made a definite decision, I wish to present for decision the second point in my letter of July 23rd. I asked that the accuser or signer of the charges disqualify himself. The facts showing prejudice are more amply set forth in my affidavit of September 19th. I do not expect you to decide disputable facts in advance of the hearing; although there is nothing to prevent where the facts are ample and indicate bad faith. But three undisputed facts appear in the record: that the President of FNMA signed the charges, that he made the decision, and that he was present and was involved in two conferences, in advance of the delivery of the charges. This is all you need to know, although it appears from the record that he took a most active part personally in the prosecution. *Abram* v. *Jones*, 35 Idaho 532, 207 P. 724, 726. I attach an extract from this opinion, as it is remarkably apropos on both points raised herein. I am aware that before the enactment of the Administrative Procedures Act the same agency or part of an agency, such as the FTC, was permitted to act as prosecutor, accuser, and judge. But I know of no case where the same indi-

vidual or individuals were permitted to occupy these positions. The difference is obvious. How can such an individual preserve even the semblance of impartiality?

In conclusion:

1. I am prosecuting this appeal.
2. I ask for postponement of the hearing pending decision and judgment of the court on the action in the District Court.
3. I ask for a definite decision now on the issue of specificity and detail.
4. I ask for a decision on whether the same individual can sign the charges, sit in judgment, make the decision against the accused, and be concerned actively and personally in conferences and investigations, prior to delivery of the charges. If you find that this cannot be done, I ask that the decision of the President of FNMA be declared null and void.

If anything in this letter has caused offense, believe me, it was furthest from my intention and desire. But it must be realized that I have now made two attempts to get a definite decision. This is the third. I do not see how I can avoid making my views known, lest it be said at some future date that I had not complained or objected, that if I had complained I could have obtained the desired relief.

I beg your kind consideration.

Very truly yours,

A. Lincoln Green

ALG/aj
Attachments

Extract from Dratt Memorandum on Motion for Summary Judgment

The following words in the charges stamp them as lacking in specificity and detail: in Charge I; the words, during the period, at times, on numerous occasions, frequently, on various occasions; in Charge II, the words, during the period, during the foregoing periods; in Charge III, the words, during the period, during official hours of business, numerous, on numerous occasions, during the time, during such period, frequently; in Charge IV, the words, during the period, frequently, at various times; in Charge V, the words, during the period, frequently, almost consistently.

These are words of generalizations and conclusions. They are the very antithesis of specificity and detail. It can be stated categorically that an allegation containing any one of these words or phrases is not specific or in detail. With such words in an allegation an accused can but deny. He cannot know the kind or the amount of evidence he must produce to meet the issue tendered. In fact such generalities and conclusions create no issue. One example should demonstrate this. Plaintiff, it is said, was rude to his stenographer during the period between November 1950 and February 1951. We assume that a charge of rudeness in itself can be definite. The plaintiff wracks his memory and thinks of three incidents that might have been interpreted as rude. He explains them in his answering affidavit. By what objective standard can the judge or the accused know whether the charge has been met and disproved? The judge may have been informed of seven alleged incidents and he proceeds to hold the accused guilty because the latter has not explained four incidents of which he knows nothing. The same example may be applied to all the other charges. These words, so liberally strewn through the charges, are an evasion of the statute. By definition, specific means definite; in detail means with particularity, item by item.

Let us take the charge that the accused on an *occasion* swore at his stenographer by saying, "God damn it to hell, why can't you do things right?" We shall assume that this charge, if found, would justify the discharge of an employee with more than fourteen years of accredited service. The accused wracks his brain and cannot recollect the incident alluded to, for no date or details that would refresh his recollection or identify the incident are stated. It is not unusual for stenographers to pass on erroneous telephone numbers.

Consider what an extraordinary power has been placed in the hands of an accuser if a blanket charge is specific and in detail. It is a power to convict. By writing in any period of time that his mind lights upon, he places upon the accused the burden of disproving the charge for the period mentioned. As it is certain that the accused cannot meet such a burden, his conviction is assured. It is not facts that decide the issue but the whim of the accuser.

The requirement that reasons be stated specifically and in detail is an important restraint and limitation on exaggeration and falsification. It is hard to invent a connected and convincing factual story of an incident but easy to say that for six months, one year, or one and a half years, the accused made telephone calls and absorbed three-quarters of the time of the stenographer on his private affairs.

The accuser is not submitted to the test of examination and cross-examination. All the more important is it that the accuser be held to the standard fixed by the statute. For it is the sole safeguard of the accused against unfounded accusations. It is no answer to say that the Civil Service Commission on appeal will protect him against such glaring injustice. The statute states in effect that he should not be submitted to the risk and expense of any hearing or decision, except for reasons stated specifically and in detail.

In some instances the accused may have specific evidence to meet a general charge. But a charge that is not specific or in detail does not become specific just because the accused may have evidence to meet it. The specificity of the charge is determined by a scrutiny of the charge before any inquiry into the merits.

In sum, when the accused is charged with derelictions during a period, frequently, at various times, he cannot know what proof he must produce to meet the charge or when, if ever, he has submitted sufficient proof. And here we have the classic test of the definiteness of a charge. If he cannot know from a reading of the charge what proof he must submit to disprove it, the charge is bad for uncertainty and lack of specificity.

If a person were charged with the commission of some trivial misdemeanor at various times during a period from January to June, 1952, no court would hesitate to dismiss the charge for lack of definiteness and specificity. Shall less protection be afforded a man who stands to lose his means of livelihood after fourteen years of accredited service?

Abram v. *Jones*, 35# Idaho 532, 207 P. 724, 726.

In the above case the respondent, a doctor, had requested that "he be furnished more specific charges and a bill of particulars showing the written report of the dental examining committee, the names of the newspapers in which the advertisements were claimed to be published, the dates and subject matter of such advertisements and the name of the anaesthetic referred to. . . ."

The court said:

> "It will be observed that the charges pursuant to which the hearing was had were couched in the most general terms, and are in fact but conclusions of law. There are no averments of facts from which the conclusions of law are drawn. It is elementary that in any judicial or quasi-judicial proceeding a pleading in the nature of an accusation or complaint must contain

positive statements of the essential facts, and that it is insufficient where it merely states conclusions. The charges brought against respondent were altogether indefinite and uncertain, and he was entitled to a bill of particulars or to charges set out specifically in order that he might have time and opportunity to prepare his defenses. . . ."

"We are found to assume that in preparing the charges against respondent the dental examining committee had reasonable ground to believe that the charges were true or, in other words, that they had received evidence which appeared to justify the revocation of respondent's licenses under the dental law. It would then be manifestly unfair to require respondent to submit himself to a hearing before the committee, which had at least tentatively prejudged the matter. We attribute only the highest motives to the commissioner and the members of the committee, nevertheless the fact remains that respondent was entitled to a hearing before an impartial body and the right was denied when he was required to submit himself before a body which was at once the accuser, prosecutor and judge."

Letter from Green to Meloy, January 26, 1953

A. LINCOLN GREEN
1305 KEY DRIVE
ALEXANDRIA, VIRGINIA

January 26, 1953

Mr. L. V. Meloy,
Chief Law Officer,
Civil Service Commission,
Washington, D. C.

Dear Sir:

I would appreciate it if you would ask the following persons, all of whom are employees of the Government, to be present at the hearing upon my appeal as I shall need their testimony:

Mr. Thomas Wilson
Mrs. Elaine Rosenberg

Miss Edythe Smith
Miss [illegible] Smith
Miss Frances Drwal
Miss Charlotte Ryan.

The testimony of the first two is especially important to me. In addition I should like Mrs. Rosenberg to bring with her any copies of statements which she may have signed and which are in her possession. There is also an audit of the work done in the legal division of F. N. MA. in which my name appears and the job sheet of Mrs. Rosenberg. These would be helpful to me. Thanking you for assistance, I am

Sincerely yours,

A. LINCOLN GREEN

Opinion of Chief Law Officer of Civil Service Commission on Appeal of A. Lincoln Green, June 5, 1953

UNITED STATES CIVIL SERVICE COMMISSION
OFFICE OF THE CHIEF LAW OFFICER
WASHINGTON 25, D. C.

CL:KR:JCW:LVM:aro

APPEAL OF A. LINCOLN GREEN

UNDER SECTION 14 OF THE VETERANS' PREFERENCE ACT OF 1944, AS AMENDED

Appeal of a removal from the position of Attorney, GS-13, Federal National Mortgage Association, Washington, D. C., effective September 19, 1952, on charges of (1) Improper conduct toward office personnel, (2) Improper use of Government office and property, (3) Improper use of Government personnel, (4) Improper absences from office, and (5) Refusal to respect authority of superiors.

INTRODUCTION

Mr. Green appealed to the Commission by letter of September 29, 1952, and his case was docketed for investiga-

tion and adjudication. During the investigation by the Commission, copies were secured of pertinent documents in the files of the Federal National Mortgage Association. In addition, affidavits were obtained from the appellant and from the following named present and former employees of the Federal National Mortgage Association: J. Stanley Baughman, President; Robert N. Reid, Vice President and General Counsel; J. A. Wood, Assistant General Counsel; Thomas F. Wilson, former Assistant General Counsel; James K. Coolidge, Attorney; Milton Gordon, Attorney; Elaine S. Cahn, Secretary; Louis H. Quinter, Loan Examiner; Edward E. Wendell, Assistant to the President; Tyler T. Green, Assistant to the President; Harry M. Gilbert, Assistant Loan Manager; Mary L. Smith, Secretary; Edith A. Smith, Secretary; Frances C. Drwal, Secretary; A. C. Tyler, Loan Manager; and Philip J. Sadoti, Classification Examiner.

Following completion of the Commission's investigation, a hearing was scheduled on the appeal for November 26, 1952. On November 17, 1952, Mr. Green directed a letter to the Commission stating that he was commencing action in the District Court for the District of Columbia for a declaratory judgment and mandatory injunction and requesting that the hearing scheduled for November 26th be postponed. The appellant was at first granted a thirty-day postponement and on December 19, 1952, he directed another letter to the Commission requesting postponement of the hearing pending decision and judgment of the District Court. This latter request by the appellant was not granted and a hearing was set for January 15, 1953. On January 8, 1953, Mr. Green again wrote the Commission and requested a postponement of action on his case so that he could join the Commission as a party defendant to his suit in the District Court. The appellant's hearing was postponed and rescheduled for January 28, 1953. In the meantime, however, Mr. Green was hospitalized and it was necessary to hold all action on the appeal in abeyance until the hearing could be scheduled again and held on March 4, 1953. Mr. Green was present at

the hearing in the Commission and was represented by Murdaugh S. Madden, Attorney at Law. The appellant's wife, Virginia L. Green, was present as an observer at the hearing. Testimony was received from Mr. Green and witnesses Frances C. Drwal, Charlotte Ryan and James K. Coolidge. The Federal National Mortgage Association was represented by the following named officials who were present in the capacity of observers: James K. Coolidge, Harrison E. Meyer, Personnel Officer, and Frederick Arend, Personnel Assistant.

On May 4, 1953, Mr. Green's cases were heard in the District Court before Judge Alexander Holtzoff and the defendants' motion to dismiss was granted. Mr. Green wrote to the Commission on May 8, 1953, and submitted excerpts from the Court proceedings with an argument on the procedural aspects of his case.

The information secured during the investigation by the Commission; the stenographic transcript of the hearing held in the Commission, and all memoranda and correspondence in connection with the case has been incorporated into the Commission's appeal file which has been and is presently available for inspection by the parties concerned, and all matters therein have been duly considered in connection with the adjudication of the case.

Analysis and Findings

The evidence in the appeal file establishes that at the time of the removal of Mr. Green, he was a preference eligible employee within the meaning of Section 14 of the Veterans' Preference Act of 1944, as amended, and as such, entitled to the benefits of the Section, including the right of appeal to the Civil Service Commission.

Section 14 of the Veterans' Preference Act (U. S. Code, Title 5, Section 863) provides in part that when the discharge of a preference eligible employee is sought, such employee shall have at least thirty days' advance written notice, "stating any and all reasons, specifically and in

detail, for any such proposed action"; such preference eligible shall be allowed a reasonable time for answering the same personally and in writing, and for furnishing affidavits in support of such answer, and shall have the right to appeal to the Civil Service Commission from an adverse decision of the administrative officer so acting.

The Federal National Mortgage Association proceeded against Mr. Green by a letter dated July 14, 1952, which constituted the advance written notice of proposed adverse action. Mr. Green was allowed a reasonable time for answering the charges preferred against him and he did so by letters of July 23 and September 9, 1952. The appellant's replies were duly considered in the employing agency and on September 19, 1952, he was sent a written notification of adverse decision. Mr. Green was separated from the rolls of the Federal National Mortgage Association on September 19, 1952; hence, he received a period of advance notice in excess of the thirty days required by the law and the Regulations of the Commission.

Mr. Green contends that the discharge action in his case is procedurally defective in that the July 14, 1952, notice of proposed adverse action did not state any and all reasons, specifically and in detail, for the action proposed. The appellant alleges that the July 14th notice failed to identify the incidents so as to enable him to prepare a proper defense. In connection with his claim that the July 14th notice is procedurally defective, Mr. Green made reference to the case of *Deak* v. *Pace*, CADC (1950), 185 F. 2d 997, and to certain comments by the Court on May 4, 1953, when the motion to dismiss the appellant's suits was granted in the District Court for the District of Columbia.

The requirement as to specificity and detail in Section 14 of the Act is met when the reasons are given specifically enough, and in sufficient detail, so that the employee may understand clearly the alleged grounds for the proposed action, know the particular offenses or deficiencies charged against him, and thus be in a position to submit his de-

fense. The technical nicety of an indictment at law is not necessary in such a personnel proceeding. The rule in *Deak* v. *Pace* is substantially the same as that referred to above which is stated in the Federal Personnel Manual, page S1-29, although Deak was removed under Section 3, Act of December 17, 1942, 56 Stat. 1053, 5 U. S. C. A. 652, and not Section 14 of the Veterans' Preference Act. *In Deak* v. *Pace* it was stated that the duty to inform and the right to be informed are for the manifest purpose of affording the employee a fair opportunity to oppose the removal. It was also stated that employees should be informed of the dates and the places referred to in the reasons stated for the removal.

In the instant case the very nature of the charges against Mr. Green prevented the citation of exact dates. The misconduct charged against the appellant was of a continuing nature and, of course, daily records of it were not kept. The charges, however, did clearly apprise Mr. Green that the misconduct referred to occurred between November, 1950 and February, 1951 [re Charges I(a), II(a), III(a)], February, 1951 and June, 1952 [re Charges I(b), II(b), III(b)], April, 1951 and April, 1952 [re Charge V], and during the six or more months while his house was under construction [re Charge IV]. As will be shown subsequently in discussing the merits of the discharge action, the incidents referred to in the charges were identified sufficiently for the appellant to fully recognize them and to submit his defense with respect to each of them.

The District Court in granting the motion to dismiss Mr. Green's suits made two comments upon which Mr. Green has placed considerable weight to support his claim that the July 14, 1952, notice was not specific and in detail. The Court stated, "While the Court is of the opinion that some of the charges presented against the plaintiff [Green] are insufficient under the authority of *Deak* v. *Pace* . . . nevertheless, at least one of them gives sufficient detail, and that is the charge contained in I(a)." Subsequently, the Court also commented, "Most of the

other charges, if not all, are insufficient under the rule of the Deak case." With all due respect to the statements of the Court it must be recognized that these were merely informal comments made during the proceedings on the motion to dismiss. Such comments are not part of the Court's decision but were made during the discussion of the case. For example, at one point earlier in the proceedings, the Court stated, "I think these charges are quite definite" and, subsequently, "I think these charges are sufficiently definite." The sole, actual finding of the Court with respect to specificity and detail was that Charge I(a) complied with the legal requirement as it referred to a specific episode which was identified by the facts and by the assertion that the appellant was warned that such conduct must not be repeated and that he stated that it would not be repeated. The Court made no finding as to any other charge as it stated "that one good charge is enough to justify severance from the service, it is sufficient to warrant a dismissal of the first count of the amended complaint." Therefore, while the Court's decision was limited to a single charge, it is necessary for the Commission in this appeal to make a decision as to the specificity and detail of each of the five charges preferred against Mr. Green.

A study of the July 14, 1952, notice of proposed adverse action, the appellant's replies, and the facts disclosed during the present appeal establishes that each of the five charges is sufficiently specific and detailed to meet the requirement of the law. In this connection, reference is made to the case of *Mulligan v. Dunlap*, DCDC (1952), 108 F. Supp. 296. In the *Mulligan* case the Court resolved the question as to whether the notice of proposed removal set forth the reasons specifically and in detail by determining that the employee concerned fully understood the nature of the charges. The Court said that the fact that the employee did fully understand the charges was clearly indicated by his reply. In Mr. Green's case this same test conclusively establishes that he fully understood the charges preferred against him. Mr. Green submitted re-

plies totaling some 75 typewritten pages in answer to the 4-page letter of charges. The content of the appellant's replies evidences that he was fully aware of the reasons for his proposed dismissal and was not prejudiced in any respect in the preparation of his defense. The July 14, 1952, notice of proposed action is, therefore, found to be in accord with the statutory requirement as to specificity and detail.

Mr. Green has also submitted that the July 14, 1952, notice is defective as "it fails to state that my discharge would promote the efficiency of the service, and in what respect and for what reasons the efficiency of the service would be promoted by my discharge." We cannot agree with the appellant in this regard. Section 14 of the Veterans' Preference Act provides that no preference eligible employee shall be discharged except for such cause as will promote the efficiency of the service. There is no requirement in the law that a notice of proposed action must state that the action proposed will promote the efficiency of the service or explain how the efficiency of the service will be promoted. The requirement is one of substance rather than form. The issue is not whether the notice states that the efficiency of the service will be promoted or explains in what respect it will be promoted. The issue is whether the personnel action does, in fact, promote the efficiency of the service.

In the light of the foregoing it is found that the procedural requirements of the law and the Regulations of the Commission were complied with by the Federal National Mortgage Association in effecting the discharge of Mr. Green on September 19, 1952. We come now to a consideration of the merits of the personnel action of discharge. The separate charges are quoted and discussed hereinafter.

Charge I. Improper Conduct Toward Office Personnel.

(a) That during the period between November 1950 and February 1951, you were at times rude and dis-

courteous and used severe language to the stenographer who was assigned to assist you; and on one occasion you flew into a rage because she failed to bring her notebook when you called her, although her desk was only ten feet from yours, and used abusive language to the extent that she was made to cry and, as a result thereof, she complained to the General Counsel and threatened to resign unless given another assignment. Subsequently she was given another assignment. At that time you were told of the complaint made by the stenographer, and you were warned by the General Counsel that such conduct toward office personnel would not be tolerated and must not be repeated. You stated there would be no repetition of such conduct.

(b) That during the period between February 1951 and June 1952, your attitude toward the second stenographer assigned to assist you was on numerous occasions distasteful and unpleasant, insulting, rude, harsh, and abrupt, notwithstanding your having previously been warned as to such conduct. You frequently lost your temper, and on two occasions became so enraged that you threw a small telephone book toward her and hit her desk. You threw papers to the floor at one time when the lawyer sharing your office asked the stenographer to do some work for him. On various occasions you knocked on your desk without calling your stenographer and said "Take this" or "Do this!". On other occasions you said to her "You come over here and you come fast!" Once you yelled at her and said if she didn't like the way things were done in your office she knew what she could do. On another occasion you swore at her when she passed on to you a telephone number that had been given her erroneously by saying "God dam it to hell, why can't you do things right."

That as a result of your conduct the stenographer became so upset and disturbed she was made to cry on various occasions; and finally in June 1952 this

second stenographer also threatened to resign her Government position unless given another assignment, which was done in order to retain her services.

That you have been critical and arrogant toward your co-workers in that when they have in good faith disagreed with you on some point of law, you have called them "ignoramus" or "imbecile".

The appellant has denied every specification in Charge I and submits that he has never conducted himself improperly toward office personnel so as to warrant his separation from the service. Mr. Green acknowledges recollection of the incident in February, 1951, when his stenographer neglected to bring her notebook. He states, however, that on this occasion he was not abusive but merely said to her, "I don't want to have to tell you again to bring your book with you when I buzz."

Mr. Green submitted that rather than being "inconsiderate and mean" as the charges indicated, he was helpful and encouraging to office personnel. In this regard he directed attention to testimony by a former stenographer of his which was entirely favorable, and to the testimony of a former co-worker which was also entirely favorable. The appellant further stated that the stenographer referred to in Charge I(b) was "the very opposite of a shrinking violet" and that had he treated her as charged, she "would in all probability have given him a tongue-lashing that he would remember to his last day." Mr. Green devoted considerable time in expressing his opinion of the character of the stenographer referred to in Charge I(b) and stated that he was considerate of her as he did not want her to leave and accept employment elsewhere. He contended that the conduct of this stenographer in time became "unbearable"; that she was frequently absent; that she pitched papers at him rather than hand them to him; and that she was impertinent. The appellant stated that she was an "interested witness" who was under the direct influence of the General Counsel, who he contends was prejudiced against him.

Mr. Green testified that on one occasion some papers did accidentally fall to the floor when he tossed them on to a desk during a discussion with another attorney. He denies ever throwing the small telephone book, or anything else, toward any stenographer. He denies stating "God damn it to hell, why can't you do things right?" He stated that at no time had he ever called a brother attorney an imbecile ~~or an~~ ignoramus. Mr. Green denied that the General Counsel ever warned him about his conduct toward office personnel.

The stenographer referred to in Charge I(a) is Edith A. Smith. In her affidavit to the Commission, Miss Smith stated that Mr. Green criticized her sharply. With respect to the notebook incident, she said that he flew into a rage, pounded the desk with his fist, and shouted at her in harsh tones. The stenographer referred to in Charge I(b) is Elaine S. Cahn. In her affidavit to the Commission, Miss Cahn stated that on one occasion Mr. Green threw a small telephone book at her in a fit of rage as she had asked him the first name of an individual whom the appellant wanted to call. Miss Cahn emphasized that on the many occasions when Mr. Green spoke rudely, it was due to his short temper and that she did not believe he intended to hurt her. She testified that the appellant had used the words "God damn it to hell" to her in regard to an erroneous telephone number which she had been given by the telephone operator and had passed on to the appellant. Both Miss Smith and Miss Cahn testified that the appellant's conduct was such that they would not continue to work for him and were reassigned elsewhere in the agency.

Miss Cahn stated that she was present when Mr. Green called Mr. Gordon an imbecile and that this occurred because the appellant disagreed with Mr. Gordon's conception of a legal problem the two were discussing.

Milton Gordon stated that he occupied the room with the appellant and Miss Cahn and that Mr. Green was often cross and rude toward her. Mr. Gordon testified that on

one occasion the appellant swore at Miss Cahn and he, subsequently, spoke to him about it and Mr. Green said that he realized he was short tempered and that he would try to control himself. Mr. Gordon said that on one occasion during a legal discussion Mr. Green used the word "imbecile or something to that effect" toward him and that on another occasion he referred to the Assistant General Counsel, Mr. Wilson, as "an ignoramus or something of that nature." He explained that his relationship with the appellant deteriorated due to the latter's loss of temper and inconsiderate manner and that he was seriously considering resigning until he was able to move away from Mr. Green. Mr. Gordon's testimony fully supports the charge that the appellant threw papers at his stenographer, ordered her about in a crude and abrupt manner, and stated "God damn it to hell, can't you do anything right?"

The General Counsel, Mr. Reid, stated that both Miss Smith and Miss Cahn had come to him and complained of the appellant's conduct and requested to be reassigned away from him as a supervisor. Mr. Reid stated that after he reassigned Miss Smith, he told the appellant that it was imperative that he correct his conduct and that Mr. Green said he was aware of his past difficulties and would endeavor to mend his ways.

The former Assistant General Counsel, Mr. Wilson, testified that Miss Smith had frequently complained to him about the treatment she had received from the appellant. Mr. Wilson said that he spoke to the appellant about Miss Smith's complaints and Mr. Green acknowledged that he had been overly severe and agreed to improve his relationship with her. Mr. Wilson stated that the appellant continued to treat Miss Smith improperly and eventually it was necessary to reassign her and replace her with Miss Cahn who also began to complain of the appellant's conduct.

Mr. Coolidge testified that he had observed Miss Smith crying in the office and when he inquired about her trouble,

she told him that the appellant had been unduly harsh and abrupt with her.

It is clear that the overwhelming weight of the evidence sustains the charge that Mr. Green's conduct toward office personnel was improper. The evidence establishes one minor error in the charge in that there was but one occasion when Mr. Green threw a telephone book toward his secretary rather than two occasions. The preponderance of the evidence definitely establishes that Mr. Green's demeanor or conduct toward office personnel was intolerable and was having a very pronounced adverse affect on office operating efficiency. The testimonies favorable to Mr. Green were submitted by his former secretary and a former co-worker who were acquainted with him during an entirely different period of time than that covered in Charge I. The witnesses who were associated with the appellant during the period covered by Charge I testified that his conduct toward office personnel was improper. As has been indicated in the evidence, he is short tempered to such an extent that he is unable to control his unreasonable conduct. We cannot close our eyes to the indisputable evidence which establishes that his conduct was improper as charged. Conduct such as the evidence establishes on the part of the appellant, in and of itself, would adversely affect the efficiency of the service to such an extent as to justify Mr. Green's discharge under the provisions of Section 14 of the Veterans' Preference Act. Charge I is found to be sustained.

Charges II and III are so closely related that they are considered and discussed together.

Charge II. Improper Use of Government Office and Property.

(a) That during the period between November 1950 and February 1951, you were assigned Government office space, including miscellaneous office supplies and equipment, and the services of a Government stenographer to carry on and perform your official duties for the Association.

During that period you improperly used the office and its miscellaneous supplies and equipment by requiring the stenographer to type your personal letters, or letters other than official letters, on Government typewriters, and to use Government stationery and other supplies and equipment.

(b) That during the period between February 1951 and June 1952, you were assigned Government office space, including miscellaneous office supplies and equipment, and the services of a Government stenographer to carry on and perform your official duties for the Association. That beginning in the summer or fall of 1951 and extending for a period of over six months and ending in the spring of 1952, a house was being constructed for your personal account.

During the foregoing periods and particularly while the house was in process of construction and immediately prior thereto, you improperly used the office and its miscellaneous equipment, including telephones, typewriters, file folders, stationery filing cabinets, and other supplies and equipment, by making and receiving numerous telephone calls concerning your personal business; and by requiring your stenographer to type personal letters for you, to keep personal books and records for you, and to make personal telephone calls for you.

Charge III. Improper Use of Government Personnel.

(a) That during the period between November 1950 and February 1951, you improperly used the services of the Government stenographer who was assigned to assist you by requiring her to write personal letters for you and to sort various personal invoices, bills, and other papers, all during official Government working hours.

(b) That during the period between February 1951 and June 1952, and particularly while the house was

under construction and immediately prior thereto, and during official hours of business, you improperly used the services of the Government stenographer who was assigned to assist you, in the following respects:

1. You required her to make numerous telephone calls concerning your personal business to supply houses and stores selling building materials and supplies; and to your architect and to contractors.

2. You required her to write letters and address envelopes to contractors and supply houses concerning bids, estimates, prices, and other matters, all relating to your personal business.

3. You required her to set up and maintain personal correspondence files for you, and files for bids and estimates.

4. You required her to prepare personal checks and maintain personal check book and records for you.

5. You required her on numerous occasions to leave the Government office and building where she was employed to take care of personal business for you, including errands to put coins in the parking meters where your personal car was parked on the street.

That the improper use of the stenographer, as set out above, particularly during the time the house was under construction, required her to devote practically three-fourths of her time to your personal work, leaving only approximately one-fourth of her time available for her Government duties; that during such period you frequently interrupted this stenographer while she was performing official work for another lawyer who shared your office space, and required her to attend to your personal business and to delay completion of such official work, and such official work was frequently delayed and postponed as a consequence thereof.

Mr. Green alleges that the amount of Government property, time and personnel that he used for his personal affairs was not as extensive as indicated in Charges II and III, and that what he did, he did with the knowledge and acquiescence of his superiors. He further stated that he was never told that his practice of dictating occasional personal letters and making occasional personal telephone calls was forbidden. The appellant stated that early in his Government employment a supervisor had told him that an occasional personal letter was countenanced "as long as it did not interfere with the work of the office." Mr. Green estimated that his secretary typed a 10 or 12 line personal letter for him on an average of less than once a week.

During the hearing in the Commission, Mr. Green submitted in evidence his personal files which he had kept at the office of the employing agency. He submitted these for the purpose of showing that his secretary did not perform an extensive amount of personal work for him. The appellant testified that the personal work performed for him by his secretary did not interfere with the performance of any of her official duties.

Mr. Green estimated that the personal telephone calls made for him by his secretary averaged approximately three per day, which he does not consider excessive. In his answer to the charge the appellant went into considerable detail in explaining the number, nature and extent of the personal calls that he made while on duty. He estimated that he used his secretary for personal errands on only one or two occasions and that there were no more than 6 or 8 times when she placed nickels in parking meters for him. Mr. Green emphasized that he only gave his secretary personal work to do when she had no official duties to perform. He said that he had never interrupted the secretary while she was performing official work and required her to attend to his personal business.

Miss Edith A. Smith, who was Mr. Green's secretary from November, 1950, to February, 1951, stated that he

had requested her to sort and arrange certain personal papers for him when she was not engaged in her regular duties. She said that she did this personal work for him spasmodically for approximately a month and a half. Miss Smith estimated that during the time that she was with Mr. Green she wrote approximately a dozen personal letters for him.

Miss Elaine S. Cahn, who was the secretary to the appellant from February, 1951, to June, 1952, gave an affidavit to the Commission in which she made detailed statements as to the amount of personal work Mr. Green had her perform for him. Among the personal work mentioned by her was the typing of the specifications for a house the appellant was building which was 25 or 30 pages in length; a brief or answer to the Alexandria Water Works which occupied her time for 2 or 3 weeks at various intervals; caring for some 8 personal file folders; and typing personal letters for him in quantities ranging from none per day up to 5 per day. Miss Cahn stated that the appellant made many personal telephone calls, on one occasion he telephoned company after company out of the classified section of the telephone book in an effort to secure a building estimate for his home. She stated that she placed nickels in parking meters for Mr. Green once or twice a day for approximately two months. Miss Cahn said that the period during which three-quarters of her time was devoted to personal work for Mr. Green lasted for approximately one month while he was building his house. She stated that on numerous occasions the appellant interrupted her in performing her official duties to make personal calls for him. She said that he had not interrupted her for the purpose of taking personal correspondence.

Mr. Milton Gordon stated that he had shared Miss Cahn's stenographic services with Mr. Green from January, 1952, to June, 1952. He said that on several occasions Miss Cahn told him that certain official work he had given her was delayed because she had to perform personal work for Mr. Green. Mr. Gordon testified that Mr. Green made many

personal telephone calls and that "most" of the incoming calls to the office concerned the appellant's personal affairs. He said that from his observation of the secretary and her work, he felt that a "substantial part of her time" was devoted to the appellant's personal work.

Mr. Edward E. Wendell and Mr. Tyler B. Green who shared office space with the appellant from November, 1951, to January, 1952, testified that he made many personal telephone calls during the duty hours. Mr. Wendell estimated that the number of such calls by Mr. Green was 5 or 6 per day.

Mr. Reid, General Counsel, stated that due to the pressure of work in the office the extent of the appellant's use of office property and personnel for personal affairs was not known to him or to the Assistant General Counsels. He said that almost immediately after the appellant's misconduct became known to him, charges were preferred.

The evidence establishes, and the appellant concedes, that he used Government property and Government personnel for his own personal needs. Mr. Green submits that his personal use of Government property and personnel was not extensive, that it was made with the knowledge and approval of his superiors, and that under these circumstances it was not an "improper use" as charged. Careful study has been made of these two charges and it is our considered opinion that the appellant's use of Government property and personnel was quite extensive and definitely greater than that customarily found throughout the Federal service. It is, of course, recognized that some Government employees occasionally use the office telephone for a personal call and it is believed that at times personal correspondence is prepared on Government time with Government property and personnel. It is not considered that any such use of Government property or personnel for personal affairs is "proper" but it is recognized that a slight personal use is, generally speaking, not considered to be "improper." In the present case a preponderance of the evi-

dence established that Mr. Green exceeded any recognizable limits of propriety and engaged in an extensive use of Government property and personnel for his own personal affairs. In this respect, in fairness to the appellant, it is deemed pertinent to state that part of Charge III is not supported by the evidence and gives an impression of far greater abuse than the appellant actually engaged in. Charge III implies that three-quarters of Mr. Green's secretary's time was devoted to his personal work for approximately 16 months, whereas, the evidence shows that this condition lasted for one month.

The appellant's defense that he was never told that his personal use of Government property and personnel was improper is completely without merit. He certainly can not but have been aware that Federal employees are not paid to perform personal work, and that the extent of his personal work was decidedly above a normal, accepted amount. As for the appellant's statement that he engaged in this personal work with the knowledge and approval of his supervisors, the evidence simply does not support him. It is believed that when the General Counsel of the Federal National Mortgage Association became aware of the extent of Mr. Green's personal work, prompt corrective action ensued.

Charge IV. Improper Absences from Office.

> That during the period of six or more months while your house was under construction, you frequently absented yourself from your office during official working hours at least two or more hours at various times daily, without permission and without leaving word of where you were going. You failed to submit the required leave slips for such absences, nor did you account for or explain the reasons for such absences.

The testimonies of Mr. Milton Gordon and Miss Elaine S. Cahn shed light on Charge IV. Mr. Gordon stated that the appellant had the custom of taking long lunch periods

and that he frequently left the office early in the afternoon. Mr. Gordon said that on an average of two or three times a week, the appellant would leave at 4:00 or 4:30 p. m. (the work day officially ended at 5:15 p. m.). Mr. Gordon acknowledged that he did not know whether or not the appellant had any official permission to leave early. Miss Cahn stated that Mr. Green would leave the office around noon and not return until 2:00, 2:30 and sometimes 3:00 p. m. She said that he took these long lunch periods once or twice a week during the time she was with him. Miss Cahn stated that the appellant never put in leave slips for the time he was off on these long lunch periods and she knew that to be correct as she prepared the leave slips.

Mr. Green stated that the building of his house had nothing to do with his absences from the office; that such absences occurred before, after and during the period that his house was under construction; and that on only two occasions did he leave the office to visit his house without taking leave. He stated that on these two occasions the visits were made between noon and 2:00 p. m.; that he "had nothing to do"; and that on both occasions he was accompanied by an attorney from the office and neither of them took any leave. Mr. Green submitted that attorneys do not "work by the clock" and do not "check in and out." He said that the General Counsel of the Federal National Mortgage Association often exceeded the time allowed for lunch.

In his reply to the charges, Mr. Green said, "There were a number of occasions when deponent lengthened out the lunch period from 12 to 2 P. M., shortening the afternoon. The alternative was to sit in his chair, fingertips together, rocking gently to and fro and gazing at the opposite wall. It was humanly impossible for dependent to do this every day. He wandered the streets aimlessly, looking in at shop windows. From the very first day that deponent came with FNMA, he was not kept very busy. There were days upon days when he did nothing."

The appellant's defense to Charge IV is not sustainable. He admits that on numerous occasions he improperly absented himself and did not submit the required leave slips. He attempts to justify this conduct by pleading that he had no work to occupy him in the office and could not bear the boredom. This is, of course, not a valid defense. Government employees are required to be on duty during their regularly established work hours unless properly excused. Attorneys are not an exception to this requirement. Conditions would indeed be chaotic if every employee so disposed were permitted to lengthen his lunch period to two hours in order to "shorten the afternoon." The evidence does not establish whether or not the appellant's claim of having no work to occupy him in the office is correct. However, a definite determination of that issue is not considered material for even if true, the fact that he had no work to occupy him could not justify the appellant's acts of improperly absenting himself from the office. Charge IV is found to be sustained.

Charge V. Refusal to Respect Authority of Superiors.

That during the period between April 1951 and April 1952 you were frequently resentful of the authority of your immediate superiors to the point of insubordination. Almost consistently you adopted an argumentative attitude when your superiors expressed any disagreement with the conclusion you reached on any matter and plainly showed and expressed resentment to any suggestions for change or further research. On one occasion involving preparation of a legal instrument, you were unwilling to make a change suggested by your superior, an Assistant General Counsel, and he was forced to order you to make such change. On another occasion you had been requested by another Assistant General Counsel to write a letter which subsequently did not meet with the approval of the Assistant General Counsel. When he suggested a change, you informed him that if he did not like the way you

had prepared the letter he could change it himself or get someone else to do so."

Mr. Green contends that "Charge V states no charge. An attorney is responsible for his opinions. The directions or orders of a superior would not exonerate him from blame and liability. He also has his own professional reputation to maintain. Two diametrically opposite opinions cannot both be right. . . . There is this to be said of Charge V. We are at last given a hint of the real grievance against deponent, which motivated these charges. This will be shown in a series of examples. . . . They show ignorance of elementary principles of law, lack of thorough training, lack of ethical standards, and falsification. . . ." In his reply to the charges, the appellant stated that the instance when he refused to change the legal instrument concerned a matter of establishing a fee for a private attorney (McClendon) who had rendered professional services to the Association. Mr. Green said that he had prepared a memorandum justifying a $3500 fee, and subsequently, was requested to prepare another memorandum justifying a fee of $5000. The appellant stated "he told Assistant General Counsel he could not do it. This was a refusal, even though politely worded. It was accepted practice in this office to ask the same attorney to write an opinion contrary to the one he had previously written. . . . No one seemed to give the least thought to the self-respect and integrity of the attorney. . . ." Mr. Green stated that the office's handling of the McClendon matter "demonstrates incompetence, which has caused financial loss to the Government, and falsification of the record. Deponent expressed no criticism of the fantastic handling of the case. He didn't have to. His presence and his known standards were sufficient criticism of such incompetence and falsification. It is this presence that the proponents have decided that they must remove at all hazards."

Mr. Green in his reply to the charge outlined several matters which he alleges show the legal incompetence and

ignorance of the fundamental principles of law on the part of his superiors. With respect to the second incident referred to in Charge V, the appellant stated as follows: "As to the other incident, there was no question of a change. Assistant General Counsel Wilson, after giving about three minutes' consideration to a draft of a letter on which deponent had labored long, told deponent to shorten it, without pointing out what part was not necessary. The letter had about four paragraphs. Deponent saw no part that could be omitted, and he asked Assistant General Counsel to undertake the job or give it to some other lawyer. . . ."

The testimonies of the appellant's former superiors and coworkers with respect to Charge V are most illuminative. Mr. Reid, the General Counsel, stated that Mr. Green evidenced "utter contempt for other attorneys and their opinions"; and that he felt that the basis of Mr. Green's difficulties was his "characteristic inflexibility. His argumentativeness was carried to such inordinate lengths. . . ." Mr. J. A. Wood, Assistant General Counsel, said that the appellant had "little elasticity in his thinking insofar as the views of others were concerned. He seemed to feel that his views were always correct. . . ." Mr. Thomas F. Wilson, former Assistant General Counsel, said that the appellant's attitude "was characterized by an unconcealed show of superiority not only over his colleagues but over his superiors. He gave every indication that he felt that his knowledge of the law, maturity of judgment, and experience in affairs was greater than that of his colleagues or his superiors. . . ." Mr. James K. Coolidge, Attorney, testified that Mr. Green refused to consider the "other side" of a question and was "intolerant of any viewpoint contrary to his own." Mr. Milton Gordon, Attorney, stated that the appellant was so opinionated that it was difficult, if not impossible, for other attorneys to work with him.

A study of the evidence concerning Charge V convinces us that Mr. Green was correct when he stated that this Charge gives "a hint" of the real reason for his discharge from the Federal National Mortgage Association. How-

ever, our reason for this conviction is based upon entirely different conclusions than those of the appellant. We find no support for Mr. Green's allegations that his superiors were ignorant of the law, lacked ethics, and were incompetent. It is definitely established that the appellant's lack of respect for his superiors and his complete concentration on his own opinions and arbitrary exclusion of the viewpoints of others underlies much of his employment difficulty.

The evidence in the appeal file relating to Charge V is extensive. Briefly stated, this evidence shows that Mr. Green's extreme argumentativeness and disrespect for his superiors and his associates made his presence as an employee a hinderance to office efficiency and progress. The nature of an attorney's services is fully recognized and with all due consideration for the individual's professional reputation and personal integrity, an arbitrary obstructionistic attitude and refusal to respect and cooperate with proper supervisory authority is as intolerable on the part of an attorney as with any other Federal employee. The evidence establishes that Mr. Green either would not or could not cooperate and work with his supervisors on office problems. He appears to have considered his personal opinions and decisions inviolable and any deviation or compromise was out of the question. Obviously no employing agency can operate efficiently with such an employee on the rolls. Charge V is found to be sustained.

Under all of the facts and circumstances of the case, it is found that the discharge of Mr. Green was for such cause as will promote the efficiency of the service, and that the personnel action of the Federal National Mortgage Association was not arbitrary, unreasonable or capricious.

Recommendation

On the basis of all of the evidence and the foregoing analysis, it does not appear that the rights of Mr. Green as a veteran have been violated or that there was any injustice in connection with his removal. Therefore, it is

recommended that no change be made in the personnel action of the Federal National Mortgage Association effecting the discharge of the appellant on September 19, 1952.

No further appeal from this decision will be entertained from either Mr. Green or the Federal National Mortgage Association unless it is submitted to the Commissioners, U. S. Civil Service Commission, Washington 25, D. C., within seven (7) days after receipt of this decision. Notification of a further appeal should be given to this office so the case files can be transmitted promptly to the Commissioners.

Since there is no further right to a hearing, additional representations should be made in writing and submitted in duplicate with the appeal to the Commissioners.

L. V. MELOY
Chief Law Officer

Letter from Green to Meloy, May 8, 1953

A. LINCOLN GREEN
1305 KEY DRIVE
ALEXANDRIA, VIRGINIA

May 8, 1953

L. V. Meloy, Esq.,
Chief Law Officer,
United States Civil Service Commission
Washington, D. C.

Dear Sir:

I am submitting herewith the ruling of the Court upon the motion to dismiss my complaint in the cases of *Green v. Boughman* and *Green v. Perkins*. The court held specifically that Charge I(a) was sufficient, that most of the other charges, if not all, are insufficient.

Applying the principles in Judge Holtzoff's ruling, it is evident that all the other charges are insufficient. Charge I(b), it is clear from Judge Holtzoff's criticism, is insuf-

ficient. Charges II, III, IV and V mention no "specific episode identified by facts." If you are still in any doubt as to which charges are good and which bad, that doubt is to be resolved, according to established rules, against the drafters of the charges, not the person charged.

The ruling of the court is, of course, entitled to respect and recognition. It confirms my contention. From the first, I have endeavored to convince the Commission that these charges are false and concocted, that the absence of facts was due to the fact that the proponents had no facts, that if the proponents were not compelled to state facts, they were given carte blanche to utter falsities and at the same time deprived me of the full right to defend myself. As those who made statements were not compelled to submit themselves to cross examination, I could not disclose the falsity in that way. And it is noteworthy that not a single one of those who made statements chose to appear and submit themselves to cross examination. And this in the face of the fact that I asked for their appearance and that the President of FNMA had indicated in his report that they would stand behind their statements. The principle statement, upon which the charges are drafted, was made by Elaine Cahn. More than six months ago, before the hearing, I said in my answering affidavit with respect to her statement:

> "Falsehoods of this type are usually disclosed on cross-examination. * * * But there is reason to believe that the young lady will not be available for examination if this case reaches the Civil Service Commission. Deponent ventures to predict right now that she will soon leave the employ of the FNMA."

Mr. Rudiger will tell you that the prediction was fulfilled in all respects. Nor was it a difficult prediction to make. Persons who falsify do not willingly submit themselves to cross-examination.

I wish to call your attention to the fact that the court overlooked the fact that Charge Ia, in and of itself, is not a charge. It alleges a warning. It is the repetition of the

offense in I(b) that is the charge, and Charge I(b) is insufficient. It is obvious furthermore that Charge I(a), of itself, could not be cause for discharge, the alleged incident having occurred more than a year and a half prior to the bringing of the charges.

I call to your attention that the proponents of these charges, if they have the facts, can draft new charges, and I would welcome a statement of charges containing facts.

I respectfully ask that action be taken in conformity with the ruling of Judge Holtzoff so that I be restored to my position without delay. My need is now grave. I have labored under great anxiety and strain for many months. For reasons of which you are aware, I should not be subjected to this anxiety and strain unless you have sufficient and compelling cause. If at any time in the past you were of the opinion that you had sufficient and compelling cause, the ruling of Judge Holtzoff should be convincing. I hold myself at your convenience to clear away any other questions that you may possibly have.

Respectfully yours,

A. LINCOLN GREEN

Letter from Green to Blann, June 12, 1953

A. LINCOLN GREEN
1305 KEY DRIVE
ALEXANDRIA, VIRGINIA

June 12, 1953

Hon. John E. Blann, Chairman
Board of Appeals and Review
Civil Service Commission
Washington 25, D. C.

Dear Sir:

I appeal from the decision of the Chief Law Officer, received June 6, 1953, affirming the removal action of the

President of the Federal National Mortgage Association, and respectfully ask for an opportunity to appear personally and present oral argument and representations on the procedural aspects and merits of the appeal.

In the findings of the Chief Law Officer reference is made to specifications for a home, said to be 25 to 30 pages long and to a brief, said to have occupied the typist two or three weeks at intervals. I have a copy of these papers and respectfully ask permission to offer them in evidence and to testify briefly with respect to them. I have also a photostatic copy of a statement in the handwriting of my immediate superior, which is relevant and which I should like to offer in evidence.

The failure to submit these documents at the hearing heretofore held resulted from the fact that I had reason to believe that the employees concerned would appear as witnesses. I had planned to cross-examine them with respect to these documents and thought of these documents only in connection with the cross-examination. When the employees failed to appear as witnesses, I was caught by surprise and overlooked the fact that I could offer the documents in evidence independently. I had reason to believe that these employees would appear as witnesses, relying on the following statement in an affidavit submitted by the President of FNMA, which is in the record:

> "I further questioned them on the contents of each of their statements to determine whether or not the information contained therein was the truth as they saw it and whether they would be willing to stand back of their statement if they were called upon to do so. Each and every employee indicated that their statements were truthful and factual to the best of their knowledge and belief and that they would stand back of the statements given."

In a letter dated January 26, 1953 I requested the Chief Law Officer to ask certain named employees who had made statements or affidavits to appear at the hearing for exam-

ination. "The testimony of the first two," I said, "is especially important to me." The first two were Mr. Thomas Wilson, my former superior, and Miss Elain Cahn, my former secretary. This request was passed on to a representative of FNMA. He told the employees that they were privileged to come or not. Mr. Wilson, it appears in the record of the hearing, said that he would have appeared if the Commission had requested his presence. None of the employees appeared. It is my understanding that the Commission can ask employees of the Government to appear, and it is clear that if it does not, an accused will be deprived frequently of material testimony in his favor. I respectfully ask that the Board request these employees, Mr. Thomas Wilson and Miss Elaine Cahn, to submit themselves to examination and that the hearing be reopened for that purpose.

The record of the hearing shows that when these employees failed to appear, I said:

> "The witnesses, especially Miss Cahn, are absolutely necessary for me to prove that the charges have no basis and I can do it absolutely with them."

It is now doubly necessary that I obtain their testimony for it appears from the findings that their absence, far from casting doubt on their credibility, has had just the opposite result. Their statements being uncontradicted by cross-examination, the Chief Law Officer has felt free to accept them all at face value. One example will demonstrate the willingness of the Chief Law Officer to credit statements on their face untrustworthy. Charge 4 alleges that I called my co-workers "ignoramus" or "imbecile". This is a serious charge and, if established, the consequences to the accused are so grave as to require that the proof be convincing and trustworthy. The following, quoted from the findings, is an example of the character of the evidence that the Chief Law Officer has accepted as proof of my guilt:

> "Mr. Gordon said that on one occasion during a legal discussion Mr. Green used the word 'imbecile or *some-*

thing to that effect' toward him and that on another occasion he referred to the Assistant General Counsel, Mr. Wilson, as 'an ignoramus or *something of that* nature.' "

Something to that effect! Something of that nature! Lawyers do not forget such epithets as "imbecile" or "ignoramus", which reflect on their professional ability. Without any evidence showing that I have been untruthful, the Chief Law Officer has given full faith and credit to the accusations and statements of a girl of nineteen as against the denials of a member of the bar of thirty years standing, who has demonstrated by a record of service a sense of duty and responsibility to his community and country, as a reading of the first few pages of his affidavit shows. I respectfully ask that the hearing be reopened and that Mr. Thomas Wilson and Miss Elaine Cahn be requested to appear for examination. Only in this way can I show that the Chief Law Officer was completely unjustified in his findings.

I wish to point out further that I have been tried upon specifications, details and facts that are not set forth in the charges. They are not even set forth in the statements upon which the charges were framed. They are first set forth in affidavits made after I had submitted my answer. It is inevitable under such circumstances that an accused will not be able to defend himself fully at the initial hearing. It will be observed further that these specifications and details enlarge the scope of the charges. Where the charges are first actually detailed and specified on affidavit submitted after answer, it is plain that an accused has been denied timely knowledge of the specifications and details, as required by law.

By letter dated July 23, 1952 I pointed out in detail the total absence of specifications and details in the charges and asked for a new statement of charges. It was refused. I made the same objection to the Chief Law Officer in a letter dated December 19, 1952 to the point where antago-

nism was engendered. Again I was denied relief. On May 4, 1953 the United States District Court, upon a motion initially made by the District Attorney representing the Commission, ruled as follows:

> "While the Court is of the opinion that some of the charges presented against the plaintiff are insufficient under the authority of Deak v. Pace, 88 Appeals D. C. 50, nevertheless, at least one of them gives sufficient detail, and that is the charge contained in I (a).
>
> That charge refers to a specific episode which is identified by the facts and by the assertion that the plaintiff was warned that such conduct must not be repeated and that he stated there would be no repetition.
>
> Most of the other charges, if not all, are insufficient under the rule of the Deak case. It is quite obvious that the person who framed the charges was not familiar with that case, and I think that the rule of that case should be brought to the attention of all administrative officials who deal with charges against personnel.
>
> In view of the fact that one good charge is enough to justify severance from the service, it is sufficient to warrant a dismissal of the first count of the amended complaint.
>
> The second count of the amended complaint is insufficient in that bias of a personnel officer does not disqualify him, as a matter of law, from discharging an employee.
>
> Accordingly, the defendant's motion to dismiss is granted."

It is obvious that Charge 1(a) in and of itself would not warrant dismissal. On May 8th I submitted a copy of the ruling to the Chief Law Officer together with a letter stating that the ruling of the court was entitled to respect and recognition and requesting that action be taken in accordance with the ruling. The Chief Law Officer has found me

guilty of all the charges and has refused to accord respect and recognition to the ruling of the court, despite the fact that the Commission is a party to the action and had initially asked for the ruling. By the easy method of styling that part of the ruling not to his liking as comment, he has decided that he need not follow it.

Enough has been shown to indicate that the procedures designed to enable me to defend myself fully and completely have been violated, that the case should be re-opened to permit me to offer the additional evidence referred to and to obtain the testimony of the named employees.

The more fundamental question is whether the Commission is not obligated in law or equity to recognize and respect the ruling of the court. In the face of this ruling, is it conceivable that upon appeal to the Circuit Court of Appeals, the discharge of the accused on Charge 1(a) will be upheld. Can our courts safely countenance the ignoring of their rulings by the very parties who asked for them? Can they allow a party to judge for himself whether he will follow their considered rulings and to what extent? By his opinion the Chief Law Officer has set the Commission in opposition to the Courts.

Leaving aside the legal aspects, is not the accused entitled in common fairness and justice to be tried on charges that state the specifications and details. I pray that the Board will give consideration to my plea that it recognize and adopt the ruling of the court. As the Board can verify from the record, I am suffering from heart disease and hypertrophic arthritis of the lumbar spine, incurred in line of duty following an injury sustained on maneuvers during the War. The latter illness is progressive. Indeed, at the time the charges were brought I had been, since the beginning of June, 1952, under treatment at the Veterans Administration. These proceedings have been a severe strain upon my physical resources and have affected my health. Justice does not require that the Board deny respect and recognition to a ruling of the United States District Court.

With the thought that the Board may wish preliminarily to examine into this question, I respectfully refer the Board to the original notice of appeal, my letter of July 24, 1952 to the President of FNMA, letter of December 19, 1952 to the Chief Law Officer and the enclosed memorandum of law submitted to the Court on the argument of the motion.

Respectfully,

A. LINCOLN GREEN

Enclosures

Letter from Green to Blann, November 29, 1953

(Received Dec. 1, 1953)

A. LINCOLN GREEN
1305 KEY DRIVE
ALEXANDRIA, VIRGINIA

November 29, 1953

Hon. John E. Blann, Chairman
Board of Appeals and Review
United States Civil Service Commission
Washington 25, D. C.

Dear Mr. Blann:

A few days ago I came across a copy of a letter from Mr. Harry Mitchell, former Chairman of the Commission to a Mr. Dawson, dated Feb. 14, 1953. As it is enlightening upon the question I raised in my notice of appeal, whether the Chief Law Officer should not have requested certain witnesses to appear, I considered that I should bring it to your attention.

In your letter of July 15th you said that the Commission had made no provision for subpoenaing witnesses. Knowing that the Commission did not have the power to subpoena, I had asked that the Chief Law Officer request the named witnesses to appear. Upon this very point Mr. Mitchell said:

> "Furthermore, most of the witnesses in Section 14 Proceedings are civil service employees and the Com-

mission is in a position to require the testimony of such civil service employees. Whenever a veteran's representative in a Section 14 case requests that any civil service employee be a witness at the hearing, such witness is required to come to the hearing and testify.

For these reasons the Commission does not believe that it should ask Congress to give it the power of subpoena in Section 14 cases."

The witnesses were civil service employees. Further, they had made the statements on which the charges were based. They were called for cross-examination on their statements. When the misconduct is proved by writings and records made contemporaneously with or reasonably promptly after the alleged misconduct, some may consider that the failure of the Chief Law Officer to request the witnesses to appear has done the employee no great harm. But it is important to note that in this case there are no records or writings in support of the charges, only statements giving the recollection of the witnesses, going back in many instances a year and a half before the date of the statements. In this case the judging authority is faced with the question whether he should put credence in the statements of these witnesses. If the employee has not the opportunity to show that their memory is faulty or that they have told palpable falsehoods he has been limited in his defense.

The position taken by the Chief Law Officer is in the record. The Chief Law Officer passed on to the employing agency the employee's request and "let them do what they decided was best." Best for whom? Is it for the head of an agency, who in this case signed the charges and sat in judgment, to decide a matter that is vital to the defense of the employee? It was decided, as may have been anticipated, by telling the witnesses that "they were privileged to come or not." They did not come, not one of them. And it is not to be expected that they would or that it was desired when they were told that they were privileged to come or not. Mr. Rudiger further said that "we will not,

as I told Mr. Green earlier, go outside of the immediate employing agency and request other agencies or persons or individuals to come or not." Why, especially where those persons had made statements against him. It was not a case of an employee requesting the presence of the head of an agency and every other important executive. The witness, Wilson, who had been my superior and had made a statement and affidavit, said that "he would have appeared if the Commission had requested his presence but otherwise he didn't think that he would."

Mr. Rudiger cited the case of Deviny v. Campbell to support the Chief Law Officer's position. But in that case the proof depended on writings and records. Further the employee in this case has limited himself to witnesses who had made statements against him. But this is all beside the point. The decision of the Court is not an endorsement of the fairness and ethics of the position taken. Equally well would the courts find that the Commission can write a simple letter requesting the presence of a named witness. Why should the Chief Law Officer choose the course that limits the employee in his defense? The struggle between the employee and those who wield the power and authority of government is at best an unequal one. The inequality is increased when the Commission refuses to use its power to obtain the presence of needed witnesses.

The situation is puzzling to me, to say the least. I know what a court of law would do with a case that depended upon the testimony of witnesses who will not appear for cross-examination on their testimony, and this on no narrow, technical ground but because such testimony is not worthy of belief. But in this case it not only creates an issue but I have actually been found guilty.

The Chief Law Officer may have acted on considerations of which I am not cognizant but I can conceive of no consideration, either of policy or convenience, that can be urged to deny what simple justice plainly demands,—that the judging authority exert itself affirmatively and indefatigably to secure for the accused the fullest opportunity to

defend himself that lies in its power. This has not been done to the prejudice of the accused.

I must apologize for the length of this letter. It had not been my original intention but I get warm, to say the least, when I consider that the position taken by the Chief Law Officer will result in injustice to many employees.

Sincerely yours,

A. LINCOLN GREEN

Letter from Blann to Green, February 3, 1954

BAR:JGC:hbw

February 3, 1954

Mr. A. Lincoln Green
1305 Key Drive
Alexandria, Virginia

Dear Mr. Green:

Reference is made to your Section 14, Veterans' Preference Act appeal from the decision of the Commission's Chief Law Officer sustaining the action of the Federal National Mortgage Association in removing you from the position of Attorney, GS-13, as the result of charges.

Careful consideration has been given your appeal and all evidence developed in connection with your case, including a transcript of the hearing conducted by the Office of the Chief Law Officer on March 4, 1953. As a result of this review, decision has been reached that Charges 1(a), 1(b), 2, and 3 as set forth in the notice of proposed adverse action are procedurally valid and that the removal action was justified and was for such cause as will promote the efficiency of the service within the meaning of Section 14 of the Veterans' Preference Act of 1944, as amended, on the basis of these charges. It was further determined that Charges 4 and 5 are defective due to lack of specificity re-

quired by Section 14 of the Act and the Commission's Regulations.

Sincerely yours,

JOHN E. BLANN
Chairman, Board of Appeals and Review

cc: Mr. Harrison Meyer
Personnel Officer
Housing and Home Finance Agency
811 Vermont Ave., N. W.
Washington 25, D. C.

cc: Mr. Murdaugh S. Madden
Attorney at Law
1080 Hill Building
839 Seventeenth St., N. W.
Washington 6, D. C.

cc: Chief Law Officer
cc: Service Record Division
DOB not shown

Letter from Green to Blann, February 13, 1954

A. LINCOLN GREEN
1305 KEY DRIVE
ALEXANDRIA, VIRGINIA

February 13, 1954

Hon. John E. Blann,
Chairmgn, Board of Appeals and Review,
United States Civil Service Commission,
Washington 25, D. C.

File BAR:JGC:hbw

Dear Mr. Blann:

I am in receipt of your letter of Feb. 3, 1954 upholding my dismissal on the basis of Charges 1, 2 and 3.

I respectfully request the re-opening of the appeal pursuant to 5 CFR, sec. 22.11 (c) 1 and an opportunity to

appear personally. Two cases, recently decided by the Circuit Court of Appeals, District of Columbia Circuit are in point on the specificity of the three charges. They are Manning v. Stevens and Money v. Anderson.

Dismissal on charges makes it virtually impossible for an attorney to obtain employment. Convinced though you may be of the sufficiency of these charges, I hope you will not deny me this opportunity to plead my cause.

Sincerely yours,

A. LINCOLN GREEN

Letter from Green to Blann, March 16, 1954

A. LINCOLN GREEN
1305 KEY DRIVE
ALEXANDRIA, VIRGINIA

March 16, 1954

Hon. John E. Blann, Chairman,
Board of Appeals and Review,
Civil Service Commission,
Washington 25, D. C.

Dear Sir:

In my telephone conversation of this day I referred to Mulligan vs. Andrews, U.S. App. D.C., No. 11716. This case was decidgd after I had mailed my letter of February 16, 1954.

You may recollect that there are five captioned charges in my case which are further subdivided. Sec. 14 of the Veterans' Preference Act provides that "no permanent . . . preference eligible . . . shall be discharged . . . except for . . . reasons given in writing. . . ."

The regulations of the Civil Service Commission, 5 CFR, sec. 9.102 also provide that "the employee shall be notified in the decision of the reasons for the action taken."

The decision of dismissal contains the following:

> "I am authorized to notify you that the decision is that the charges are sustained, and that your discharge will be for such cause as will promote the efficiency of the service, as provided in section 14 of the Veterans' Preference Act of 1944, as amended."

The Court of Appeals in this district in Mulligan vs. Andrews said:

> "Under the provisions of the statute and of the regulations outlined above, only findings upon such charges, *specifically identified*, can constitute the reasons required in the adverse decision."

Very truly yours,

A. LINCOLN GREEN

Letter from Green to Blann, July 22, 1954

A. LINCOLN GREEN
1305 KEY DRIVE
ALEXANDRIA, VIRGINIA

July 22, 1954

Mr. John E. Blann, Chairman,
Board of Appeals & Review
United States Civil Service Commission,
Washington 25, D. C.

Dear Sir:

More than five months have gone by since I requested reconsideration of your decision holding the first three charges sufficient and affirming my dismissal on these charges. I have called you four times. The last was on July 16th. I pressed you again and again and again to take some action on my request. The delay is inexplicable. You do not have to re-read the record or consider new evidence. I only asked you to consider three cases, with which you must be already familiar as they reversed decisions of

your Board. It was particularly appropriate to ask for reconsideration as these cases were decided at the time of or subsequent to the Board decision in my case.

A fourth decision has now been added to the three, Blackmar v. U. S., 120 F. Supp. 408, where the defects that caused the court to reverse the Board are identical with those in my case, so much so as to excite the suspicion that the defective charges and agency decision of dismissal in that case were used as the model in my case.

I can gain nothing from further urging except antagonism. The court recently decided that I must exhaust the administrative remedy. The pendency of my application for reconsideration would prevent resort to the court. I am therefore withdrawing the application.

I have taken this step with reluctance but I cannot reasonably expect that those who found me guilty of using abusive language to my stenographer without caring to inquire what those abusive words were and in the face of the sworn statement of the stenographer that I did not use abusive words will now be inclined to do me justice.

I cannot reasonably expect that those who found me guilty of the second and third charges will now give consideration to the statement of my superior that the personal work was not extensive and was known to him.

I cannot reasonably expect that those who accepted the statement of a girl of nineteen under the influence of the accuser's investigators against that of a member of the Bar of thirty years standing with a record that proves his integrity and character, including service in two wars, will now be willing to give effect to the decisions of the court.

I cannot reasonably expect that those who were indifferent to the distortions and misstatements in the findings and decision of the Chief Law Officer will now be open minded and ready to do justice.

I cannot reasonably expect that those who did not see the gross impropriety of the accuser acting also as judge

in a proceeding in which he was interested will respect the decisions of the court.

I protested to you the failure of the Commission to request certain named witnesses, employees of the Government, to appear at the hearing for cross-examination on their statements. It was vital to me to prove that these statements were untrue. I pointed out to you that the evil practice of the Commission of allowing the witness to be informed that he is privileged to appear or stay away, as he pleases, is an encouragement to him to stay away. You told me that the Commission had not the power of subpoena. I can have no confidence that you will get the point of the cases cited to you when you fail to distinguish between the power of subpoena and a request by the Commission to an employee who has made a prejudicial written statement that he appear at the hearing in the furtherance of justice and submit to examination on his statement. This power of the Commission to request the presence of a witness who is an employee of the Government, I brought to your attention, was affirmed by a former chairman of the Commission, Mr. Harry Mitchell. It had no effect on your decision.

The initial task in the case was the sifting of the evidence. For never has there been such a brazen disregard of the principles of relevancy, of the limitations imposed by the charges; never has there been such licence, unchecked and unhindered by the Commission, in the utterance of innuendo, bare accusation, hearsay and double hearsay,—anything and everything introduced into the statements and affidavits if it was considered to be of the least help in the worthy object of effecting my dismissal, all without regard for consistency or the dignity and self-respect of the maker of the statements. Imagine this, twenty separate accusations collected under five headings, all without dates or the facts of a specific incident. I challenge you or anyone to look at the charges or statements and extract from them a single date or the facts of a specific incident. Yet, you must know that the cases require dates and the law requires the

charges to be specific and in detail. Whoever heard of converting acts, committed openly and continuously for eighteen months under the eyes of my superior with his knowledge and acquiescence, into offenses without at least warning the employee that the acts are now regarded as offenses. The charges, I showed to you but without effect, are blanket charges. Countless, unknown offenses have been covered in by the use of such poteift words as frequently, at various times, numerous, at times, on various occasions, in plain violation of the statute requiring specificity and detail.

The true reasons for my dismissal appear in the proceedings and they are documented. I had refused to falsify, to write a legal opinion holding the government liable for a larger sum than justified. I had, from time to time, asked for more work, but though there was insufficient work, employees were taken on. I had mentioned the situation to the man responsible, the head of the agency. He thereafter signed the charges and became my accuser and judge.

Men can be incompetent in government for years without danger of losing their jobs. Others avoid trouble by blind obedience and acquiescence to actions clearly detrimental to the interests of the government. The unpardonable crime to the bureaucrat is to adhere to one's personal and professional standards, to fail to conform. I have, at times, regretted that I am constitutionally unable to choose the easy way. But it is a little late in life for me to change.

This fight is not of my making, but I shall see it through. I shall not stand alone. There are fair minded men who hate the perversion of government power, the concoction of charges against a man of good reputation. There are men who will question the singular obtuseness of your Board.

The statements I have made herein, insofar as they refer to the Board and the Chief Law Officer, add up to this,—that investigation of this case will disclose that corrective action is needed to bring the quasi-judicial functions of the Civil Service Commission up to a respectable and proper standard.

I ask that you confirm that I have withdrawn my application for re-consideration of your decision and that with the withdrawal, no proceeding is pending before the Commission.

Very truly yours,

A. LINCOLN GREEN

Exhibit 1

District of Columbia : ss:

AFFIDAVIT

After first being duly sworn, I hereby depose and say as follows. My name is J. Stanley Baughman. I am President of Federal National Mortgage Association.

My relationship with Mr. Green was very far removed because I had practically no direct contact with him in business of the Association. Mr. Green was under the supervision of the General Counsel.

Information as a result of the investigation by the General Counsel of the so-called conditions in the office with reference to Mr. Green was brought to my attention. I was present in the General Counsel's office at the time some of these charges were called to the attention of Mr. Green and suggested that if they were true, that he no doubt should resign. A second meeting was held in the General Counsel's office at which I was present, and again some of the charges were brought to the attention of Mr. Green and I again suggested that he possibly should resign if the information, as presented, was true. From a factual standpoint, Mr. Green said that he did not believe the information contained in the charges was correct and indicated that he would not resign. As a result thereof, the final letter stating the charges was prepared, which I signed, and had delivered to Mr. Green. I personally interviewed each employee who had made a written statement to determine whether or not there had been any pressure or influence put upon them in connection with their making such a state-

ment; each and every one personally admitted that his or her statement was voluntarily given. I further questioned them on the contents of each of their statements to determine whether or not the information contained therein was the truth as they saw it and whether they would be willing to stand back of their statements if they were called upon to do so. Each and every employee indicated that their statements were truthful and factual to the best of their knowledge and belief and that they would stand back of the statements given.

There is one thing that I want to emphasize—my recommendation for Mr. Green's discharge was based upon the statements of the employees after a personal interview with each and every one of them, and upon Mr. Green's failure to overcome the statements of the employees in his answer.

In witness whereof, I hereto set my hand.

J. STANLEY BAUGHMAN
J. Stanley Baughman

Subscribed and sworn to before me this 15th day of October, 1952.

FRANK E. COHN
Investigator

Exhibit 2

District of Columbia: ss:

AFFIDAVIT

After first being duly sworn, I hereby depose and say as follows. My name is Robert Newton Reid. I am Vice President and General Counsel, Federal National Mortgage Association.

When I first met Mr. Abraham Lincoln Green, the subject of this investigation, he was employed by the Reconstruction Finance Corporation. That was in the summer of 1950. It was my understanding that he had been an employee of the war-time Foreign Economic Administration.

but had automatically become an RFC employee when FEA was absorbed by RFC. He was introduced to me as an employee that RFC proposed to transfer to Federal National Mortgage Association. In that connection I should explain that on September 7, 1950, pursuant to Reorganization Plan No. 22 of 1950, FNMA was to be transferred out of RFC to become a part of the Housing and Home Finance Agency.

As the head of the FNMA legal organization, I was Mr. Green's immediate supervisor for a brief period terminating soon after September 7, 1950. I remember advising him to wind up his RFC work; I remember that he commented that in RFC it had been a long time since he had had a stenographer assigned to assist him.

Soon after September 7, 1950, I personally solicited and interviewed Miss Frances C. Drwal, who had served as RFC stenographer for Mr. Green at an earlier time, and endeavored to persuade her to come to work for Mr. Green in FNMA. She declined even though the proferred position was one grade higher than the job she then held, and carried a higher salary. Miss Drwal is the same person who signed Exhibit "B" attached to Mr. Green's "answer" to the statement of charges herein.

Toward the end of 1950 the Office of the General Counsel, FNMA, was divided into two separate sections, after which Mr. Green was one step removed from my immediate supervision. Up to that time, Mr. Green had not contributed appreciably to the discharge of FNMA's legal workload—he had pointed out that he could not do effective work without an assigned stenographer.

My direct knowledge of the matter described in Charge I (a), Improper conduct toward office personnel, is that the stenographer in question, who was Mrs. Edith Smith, came into my office—I think it was about February 1951—and stated that Mr. Green had reprimanded her in a manner which she considered to be unnecessarily harsh—she said no one had ever talked to her like that before—that the cumulative effects of working for Mr. Green, taken together with

the experience in which she had been over-reprimanded for not having her notebook with her when she responded to his call, were such that she was unwilling to remain as an employee of FNMA unless she could be given work other than the assignment to assist Mr. Green. At that time she told me she had cried earlier when this event had occurred, and on numerous other occasions when she considered that Mr. Green had treated her harshly without justification. I do not recall that she stated the precise language that Mr. Green had used on any of these occasions. She did say that the basic difficulty was his tone of voice and general demeanor even more than the words he spoke.

Mrs. Smith was a capable and valued stenographer. In the interests of saving her services for the Office of the General Counsel, I arranged for her reassignment. I do not remember ever myself hearing Mr. Green use abusive language toward Mrs. Smith, but there were probably no occasions where I would have been so situated as to have heard such language if uttered.

In the summer of 1950 I had learned from Mr. Dudley Digges, whose successor is Mr. John Airhart, and from Mrs. Mae B. Bird, Reconstruction Finance Corporation, Office of the General Counsel, that for a considerable period Mr. Green had not had a stenographer assigned to him regularly. It appeared that the stenographers in the so-called "pool" of the RFC Office of the General Counsel were not willing to take his work, and had indicated generally that they would resign in preference to accepting an assignment with him. Following the transfer of FNMA from RFC to HHFA, I indicated to Mr. Green that his reputation with the RFC stenographers was not good, and reminded him that we in FNMA had gone to considerable trouble to obtain a non-RFC stenographer, in the person of Mrs. Edith Smith, who had come all the way from Rhode Island.

After it had become necessary to reassign Mrs. Smith, I told Mr. Green that when, as, and if we were able to get him another stenographer, it would be imperative that he modify and correct his conduct so that there would be no

recurrence of situations of the type which had developed with Mrs. Smith. He replied that he was aware of his past difficulties with stenographers but would assuredly endeavor to succeed with any new one that could be obtained.

Except as I have just stated, I do not remember speaking to Mr. Green on this subject during the period that Mrs. Smith was assigned to assist him.

Charge I (b). One item of my direct knowledge of Mr. Green's difficulties with his second stenographer, who was Miss Elaine S. Cahn until she was married several days ago, is that I remember seeing her at her desk on at least one occasion when she was crying, or obviously had been crying. I did not know at the time what the trouble was. In the spring of 1952 it was brought to my attention—I do not remember by whom—that Miss Cahn was dissatisfied in her position as stenographer for Mr. Green and was making inquiries on the outside for other employment. Subsequently it developed that Miss Cahn might be willing to remain with Mr. Green if additional responsibility could be delegated to her and she could be promoted. Regarding it as important to retain Miss Cahn for Mr. Green, if possible, I directed that a study be made to determine whether a promotion was feasible. A promotion was effected.

In June 1952, Miss Cahn came into my office one day and stated that the cumulative effects of Mr. Green's abusive and unfortunate conduct—I believe those were her approximate words—were such that the limit of her endurance had been reached, and she could not remain with the Association any longer unless she were given a new and different assignment. She said she was compelled to reach this conclusion notwithstanding her recent promotion.

In the interest of retaining Miss Cahn, I caused her to be moved from Mr. Green's office to the reception room outside of my own office, expecting that a reassignment could be effected in due course.

Miss Cahn in a conversation which occurred after the charges had been served told me that Mr. Green had upon

occasion sworn at her and that she did not feel it necessary that she endure treatment of that type. She stated that he was characterized with generally-disagreeable manners, had a gruff manner of speaking, and exhibited a marked tendency to treat her as a person of a lower grade of society. She told me also, according to my recollection, that Mr. Green had thrown books at her. Although no examples of conduct of the serious nature that I have just described ever occurred in my presence, I have upon occasion observed him address stenographers and office subordinates or even associates with such a demeanor and in such a tone of voice as to indicate that he regarded them as inferior people.

Never in my presence did Mr. Green call any of the lawyers in the office by the name of "ignoramus" or "imbecile." I have, however, witnessed his disdain upon occasions when one or another of the other attorneys expressed a view different from his. His conduct in such circumstances clearly evidenced his utter contempt for the other attorneys and their opinions. Never in my presence did Mr. Green swear at any stenographer.

In reference to Charge II (a) and (b), Charge III (a) and (b), and Charge IV, I have no appreciable firsthand knowledge of the misconduct as described in the statement of charges. The information contained in the charges was developed by an office investigation which I directed to be made in about June 1952—after Miss Cahn's request for transfer—and presumably the facts set forth will be confirmed by other witnesses.

With respect to Charge V, refusal to respect authority of superiors, I was not present upon the happening of either of the incidents described or of other similar incidents. The Assistant General Counsel was Mr. Thomas F. Wilson who, at or about the time of the two described incidents, reported them to me. On those occasions I found Mr. Wilson to be in a flushed, highly nervous, and considerably agitated condition as a consequence of these experiences with Mr. Green. I remember telling Mr. Wilson that in my

view the problems were within the province of the Assistant General Counsel, and I expressed the hope he would be able to resolve the situations between himself and Mr. Green. Mr. Wilson resigned as FNMA Assistant General Counsel in about April of 1952.

I do not recall any occasion in which I would consider that Mr. Green had failed to respect the authority of the General Counsel.

Since September 7, 1950, Mr. Green has served under a succession of immediate supervisors, including, besides myself, Mr. Frank Kelly, now deceased, former Assistant General Counsel, Mr. James Coolidge, former Acting Assistant General Counsel, Mr. Thomas F. Wilson, since resigned, former Assistant General Counsel, and Mr. J. Arthur Wood, present Assistant General Counsel. On numerous occasions I have discussed with these supervisors the problem of creating an opportunity for him to become a useful and productive part of the Office of the General Counsel, FNMA. On a number of such occasions it was concluded that a fresh start should be attempted; that work of the same sort that was assigned to the other attorneys should be assigned to Mr. Green. The attempts were made but each, successively, was unsuccessful. In my judgment, the basic reason for the lack of success was Mr. Green's characteristic inflexibility. His argumentativeness was carried to such inordinate lengths, in my opinion, that his supervisors became exhausted. He was opinionated to such a degree that he was wholely unable or unwilling to adapt his thinking to general operating policies that had been promulgated by the General Counsel and other higher authority.

Ultimately I determined that the full-time responsibility for legislative matters should be transferred to Mr. Green. I think that was in the forepart of 1951. Under this assignment he was obligated to examine all issues of the Congressional Record and the Federal Register for matters pertinent to FNMA's operations, or which might be of interest to the principal members of the FNMA staff. It was

his responsibility to obtain copies of pertinent bills and statutes and to make careful studies and analyses thereof.

In May or June of 1952 I ascertained that Mr. Green was performing little, if any, of the work that I have just described. He had "delegated" the responsibility to his stenographer. This discovery was made on an occasion when the FNMA President, Mr. J. S. Baughman, came into my office and inquired concerning the status of a bill, S. 515, under which mortgages aggregating approximately $100,000,000 would have been transferred from the Reconstruction Finance Corporation to the Housing and Home Finance Administrator. Although there had been important recent action by a legislative committee with respect to the bill, when Mr. Baughman and I went into Mr. Green's office we found that he was wholly uninformed on the subject. A copy of the bill reflecting the legislative action had been received in Mr. Green's office and had been placed in his office file, without—so far as I could ascertain—having been reviewed or having been given any consideration by him whatsoever. In this connection, Mr. Green had earlier been furnished with and had in his office files copies of memoranda which had passed between me and the General Counsel of the Housing and Home Finance Agency. These memoranda made it quite evident that the legislation was of prime importance to FNMA.

I have mentioned the foregoing incident chiefly to indicate that Mr. Green at all times had assignments which were more than adequate to keep him fully occupied. In some respects, it now appears, he apparently disdained to recognize the scope of assignments made to him. It is my opinion that there was enough work assigned to him to occupy his full time plus a liberal amount of overtime.

I should mention that in August and September 1950, contemporaneously with the transfer of FNMA from the Reconstruction Finance Corporation to the Housing and Home Finance Agency, I was voluntarily assisted on an overtime basis, without solicitation, by Mr. Wilson and Mr. Wood in completing the tremendous load of legal work in-

cident to that transfer. On many occasions, covering a considerable period, voluntary overtime—not compensated for—by the three lawyers in question lasted until as late as 2:00 or 3:00 A. M. During this period Mr. Green was the fourth lawyer on the staff; he did not avail himself of the continuing opportunities to become a member of the legal team.

I should explain for the record that the physical arrangement of the office space of the Office of the General Counsel, FNMA, is such that Mr. Green has occupied a room which was wholly separate from the rooms occupied by the Assistant General Counsel and the General Counsel. In his answer Mr. Green alleged that the door between the room he occupied most recently and the adjacent room occupied by the Assistant General Counsel was generally open. On frequent occasions when I came into the office space occupied by the Assistant General Counsel I observed, contrary to Mr. Green's statement, that the door was generally closed.

Since immediately prior to the transfer of FNMA from RFC to HHFA, the Office of the General Counsel, FNMA, has been seriously understaffed in relation to its workload. There has been more work for everybody than could possibly be handled, even with many hours of overtime. This situation is still true. As General Counsel, I have done a large amount of work which would have been done by others if there had been sufficient personnel. The same is true of the Assistant General Counsels. The fact that much of the misconduct described in the statement of charges occurred without the knowledge of the General Counsel or Assistant General Counsels resulted in a considerable measure from the sheer volume and pressure of this work. Almost immediately after the misconduct became known to the General Counsel, these charges were brought.

I should like to point out for the record that prior to the time of delivery of the statement of charges to Mr. Green I did not talk to or otherwise endeavor to influence, directly or indirectly, any of the persons who furnished state-

ments upon which the original statement of charges was predicated.

In witness whereof I hereto set my hand.

ROBERT NEWTON REID
Robert Newton Reid

Subscribed and sworn to before me this 10th day of October, 1952.

FRANK E. COLE
Investigator

Exhibit 3

District of Columbia : ss :

AFFIDAVIT

I, J. Arthur Wood, being first duly sworn, hereby depose and say as follows: I am Assistant General Counsel, Federal National Mortgage Association.

In reply to the question as to when I first knew Mr. Green, Mr. Green was transferred to FNMA from RFC shortly before the transfer of FNMA from RFC, and at that time I met Mr. Green, but had no immediate contacts insofar as business was concerned. I don't believe I had any dealings with him until some time around the first part of 1951. When the Mortgage Loan Section was established, around April or May of 1951 as I recall, Mr. Wilson, Mr. Green and myself worked in the same Section. Mr. Wilson left the Association some time in April of this year, and June 9th I was made Assistant General Counsel, and Mr. Green was under my supervision for a short period, up until the time of his dismissal.

With respect to the question as to whether I have any direct knowledge concerning the charge relating to Mrs. Edith Smith, I have none.

With respect to the charge relating to Miss Cahn (now Mrs. Rosenthal), some time the latter part of June the Gen-

eral Counsel told me that he had received information as to possible improper conduct on the part of Mr. Green, and requested that I interrogate Miss Cahn to ascertain any factual information with respect thereto. I subsequently called Miss Cahn into my office and told her what Col. Reid had indicated to me and asked if she would tell me what happened when she was in the office with Mr. Green. The information given me by Miss Cahn, which later became the basis of a portion of the charges, was furnished voluntarily.

When I was made Assistant General Counsel, I moved from the small Room 861 to Room 859. Mr. Gordon had previously been occupying Room 857 with Mr. Green. When I moved, it was decided to let Mr. Gordon occupy the separate office in Room 861. When I called Mr. Gordon in and indicated that we had decided to let him occupy that office he said it was a good thing that he could move because he had about made up his mind that he would have to quit unless he was separated from Mr. Green. I asked Mr. Gordon why he was so anxious to move and he said that it was just impossible to get along with Mr. Green; that he would undertake to discuss points of law and problems with Mr. Green who had on occasion said he was an "ignoramus" or "imbecile," and that Mr. Green's attitude was such that they had almost come to blows on that occasion; that he had reached the point where he couldn't discuss matters of law with Mr. Green, which he certainly thought attorneys should be able to do without extreme outbursts of temper; and further, that the situation had reached the point where he had been forced to have an understanding with Mr. Green that they would not discuss any matters or exchange any views, but would just say "Good morning" and "Good night."

I have no direct knowledge with respect to the charge concerning the improper use of Government facilities, other than as told me by Miss Cahn.

As to the improper use of Government personnel, I only know what Miss Cahn told me; Miss Cahn did say, however,

that she would not continue working for Mr. Green because of his conduct and attitude.

Other than what Miss Cahn told me, I have no direct knowledge with respect to Mr. Green taking leave and absenting himself from the office without filing the required leave slips, as I was in no position to observe what Mr Green was doing because my office was separate from his office.

With respect to the question as to what knowledge I may have regarding Charge V, which concerns Mr. Green's refusal to respect the authority of his superiors, I can say that on several occasions when Mr. Wilson was Assistant General Counsel and Mr. Green was working under him, that Mr. Wilson, after arguments with Mr. Green, would come into my office to discuss the matter generally with me. On one occasion I recall, Mr. Wilson came in quite disturbed and apparently somewhat emotionally upset and said he just didn't know what we could do with Abe. He asked me if I had heard the argument in the next room and I told him I had heard rather loud talking even though the door between our offices was closed, but that I did not know what was being said. Mr. Wilson stated that he had just had a "run in" with Mr. Green and that he just didn't know exactly what could be done because of Mr. Green's unwillingness to try to listen to any view on a matter different from his own. He said he had just had a conference with Abe, which ended in a very heated argument and Abe apparently was unwilling to do something which he wanted done, so he said he had ordered him to do it. Mr. Wilson said he had practically lost patience because Abe seemed to be disparaging to views on a point of law or policy questions which differed from the view held by him, and that while they had had several previous arguments that this one had unfortunately gone to the point where he had to tell Abe to go ahead and do something which was tantamount to an order.

On several occasions Mr. Wilson came into my office with a substantially similar complaint and said he had

tried to discuss a matter with Mr. Green in a rational manner without avail, and he asked me just what in the world I thought could be done in the circumstances. In other words, he asked if I had any suggestions to offer as to how it might be possible to deal with Mr. Green in view of his disdainful attitude and the fact that he thought he was always correct and others were wrong. As we were very busy and working under considerable pressure, I do not recall specific dates or times when Mr. Wilson came into my office as he frequently dropped in to discuss many matters. However, I can say he came in on several occasions to discuss Mr. Green during the period that Mr. Green was working under him when he was Assistant General Counsel.

I might add that for a short period of time Mr. Green worked under me as Assistant General Counsel. While I do not recall getting into any heated arguments with Mr. Green, we did have several conferences concerning points of law and questions of policy and I found him extremely difficult to deal with. He was very opinionated and seemed to have little elasticity in his thinking insofar as the views of others were concerned. He seemed to feel that his views were always correct and would frequently deprecate the views of others. During the short time that Mr. Green was under my supervision it became increasingly apparent that he was a very difficult person to work with because of his arrogant and inflexible attitude, and his apparent disregard for the views and opinions of others.

In Witness Whereof, I have hereunto set my hand this 16th day of October, 1952.

J. Arthur Wood

Subscribed and sworn to before me
this 16th day of October, 1952.

Frank E. Cote
Investigator

Exhibit 4

District of Columbia, ss:.

AFFIDAVIT.

I, THOMAS F. WILSON, being first duly sworn, depose and say as follows:

I first met Mr. Abraham Lincoln Green in the summer of 1950 when, as Counsel for Federal National Mortgage Association, I paid him a visit in his office to welcome him to the staff of the Association. This was immediately prior to the transfer of the Association from Reconstruction Finance Corporation to the Housing and Home Finance Agency on September 7, 1950 pursuant to Reorganization Plan No. 22 of 1950. At various times after that date I exercised supervision over Mr. Green, first in the capacity as Counsel and later, from about June of 1951, as Assistant General Counsel, until I left the Association in April of 1952 to become Assistant General Counsel of Defense Materials Procurement Agency.

Immediately prior to the transfer no stenographer had been assigned to Mr. Green in the RFC with the consequence that it became necessary to recruit the services of a stenographer for him in order that he might effectively discharge his duties. Efforts to enlist the services of stenographic help from RFC who were eligible for transfer to FNMA were unsuccessful with the result that the General Counsel and I interviewed applicants other than RFC personnel for appointment as Mr. Green's secretary. We recruited one Mrs. Edith Smith who was assigned to Mr. Green in or about November 1950 and she continued to work for him until about February 1951.

Almost from the start and with increasing frequency, Mrs. Smith complained to me that she found Mr. Green extremely distasteful to work for and enlisted my aid in having her reassigned. She complained that he was rude and intemperate in his address to her, sometimes giving her peremptory orders where a simple request would have sufficed, and in general complained of the overbearing and

arrogant manner with which he treated her. Having already gained the impression that Mr. Green was a somewhat difficult person to deal with, I attempted at first to minimize the matter and advised Mrs. Smith that with some understanding on her part I was sure she would be able to get along with Mr. Green. She promised she would try, but shortly thereafter, and following several more altercations she had with Mr. Green, she visited me in my office wringing her hands and in a highly nervous state indicating that she could no longer endure Mr. Green's abusive treatment of her. It is my impression now that Mrs. Smith complained that when she had not discharged an assignment quite to Mr. Green's liking, he would convey his annoyance by arising abruptly from his chair, slamming whatever papers or material he had in his hand on the desk top, and pacing about the room, abusing her in loud tones. At this time, which was about January 1951, the General Counsel and myself felt that things had gone so far that we were obliged to talk to Mr. Green about it. We advised him of the difficulty we had in procuring stenographic services for him—we had in the meantime learned from administrative officers in the Office of the General Counsel, RFC, that he had had similar difficulties before—and stated to him that he must mend his ways with Mrs. Smith or run the risk of not having secretarial assistance. Mr. Green acknowledged that perhaps he had been overly severe with Mrs. Smith on occasion, but that it was not intended; that he regretted such occasions at the time of their occurrence and tried to make amends to Mrs. Smith by jollying her to assure her that there were no hard feelings. I remember counseling Mr. Green that jollying was not likely to be appreciated by a person whom he had just abused; he agreed that it was more advisable to avoid the occurrence in the first place and stated that he would try to improve relations between Mrs. Smith and himself. I myself asked Mrs. Smith to show as much forbearance as she could and to try to understand Mr. Green's peculiarities. She promised she would. The situation did not improve, however, and some time in February their relations became so untenable that Mrs. Smith was re-

assigned to another lawyer on the staff and a replacement for Mr. Green was found in Miss Elaine Cahn (now Mrs. Rosenthal).

At first I thought this new relationship would work out well. Mrs. Rosenthal is an energetic, capable, young woman with a sense of humor that I thought would be effective in helping her to get along with Mr. Green. Mr. Green told me that he liked her and spoke in some complimentary terms concerning her. I thought we had solved the personnel problem. How long the relationship continued compatible I do not know, but shortly prior to my leaving the staff of the Association, when she was at that time serving Mr. Green and another lawyer on the staff, Mrs. Rosenthal complained to me that she did not care for the manner in which Mr. Green was treating her, in particular that he seemed to vent on her his irritation of the fact that she had to perform services for his associates as well as for himself; to my surprise she stated that this had been going on for some time but that she had not wanted to bother me with it. I did not concern myself overly much with the matter as I was already contemplating leaving the Association and was devoting all my attentions to cleaning up the work I had in hand; but when she later stated that Mr. Green had sworn at her on occasion and that she felt the time would soon arrive when she would have to ask to be released of her duties to Mr. Green, I advised the General Counsel that I thought he would do well to look into the matter inasmuch as I thought from what Mrs. Rosenthal had told me that another personnel problem similar to that concerning Mrs. Smith and Mr. Green was developing. Mr. Green's office associate, Mr. Milton Gordon, also complained to me at or about this time that the situation was becoming rapidly untenable between himself and Mr. Green and, having in mind my contemplated departure from FNMA, suggested that I make a suggestion to the General Counsel about providing space for him separate from Mr. Green. About the same time Mr. Gordon told me of his difficulty in getting his stenographic work out. Knowing that Mrs. Rosenthal was

serving two people, I permitted him to use my secretary, Mrs. Smith's services when she was not doing anything for me. I noticed he utilized her services frequently.

I never heard Mr. Green use the epithet "imbecile" or "ignoramus" to anybody, but I do remember having heard that he had so characterized Mr. Gordon to his face and my wryly remarking to Mr. Gordon that apparently he too had gained Mr. Green's peculiar mark of favor. This was because I frequently heard Mr. Green address his associates in very unflattering terms, and on one occasion in particular, when three or four were present and Mr. Green was trying to instruct an uncomprehending Loan Examiner as to his views on a particular case, Mr. Green stated that he was sick and tired banging his head against a stone wall endeavoring to get the Loan Examiner to understand.

I don't recall that I have ever heard Mr. Green swear at anybody. However, on many occasions Mr. Green's attitude toward his fellow associates can only be described as exhibiting a contemptous disdain for them and their opinions that amounted to intellectual arrogance.

Mr. Green, both in his attitude toward me and to his associates, was prone to be extremely argumentative and very opinionated with the result that under the best of circumstances it was always difficult to reconcile differences of opinion that would normally be disposed of with ease among fellow associates. In my own case I had the impression, formed very early in my association with Mr. Green, that he greatly resented working under my supervision. As a consequence, it was more than usually difficult for me to work in cooperation with him and I found myself assigning more complex and controversial matters to others on the staff or performing the work myself, assigning to Mr. Green, on the other hand, more long-term projects such as preparation of standard contract forms and provisions, legislative reference work, etc. which were not likely to engender disputes as to policy or decisions on individual cases. However, there were necessarily some matters of a controversial nature which I assigned to Mr.

Green and there were numerous instances in which even when we agreed as to the result to be achieved, there were sharp differences of opinion between us as to how the matter should be presented. After spending more than the usual amount of time translating to Mr. Green my views of the manner in which a matter should be presented, I frequently wound up doing it myself because of Mr. Green's obvious reluctance to perform the assignment in the manner in which I wanted it. In two particular instances, after discussing his drafts with him, I decided how I wanted to dispose of the matter and requested Mr. Green to perform the assignment in the manner that I suggested. He remonstrated with considerable vehemence that if I didn't like the way he performed his task that I should assign the matter to someone else or that I should do it myself. On one of these occasions I had to direct Mr. Green emphatically to perform the assignment. On the second occasion, after a considerable show of impatience and unwillingness by Mr. Green to cooperate with me, I avoided an issue of insubordination by stating that I would do it myself. The first of these involved the preparation of certain material for presentation to the Bureau of the Budget in connection with our Fiscal 1952 Estimates, which was urgently requested by the Bureau. The second, I believe, was the manner in which the subject matter of a letter disposing of a problem should be presented. On both such occasions Mr. Green's display of temper and reluctance to do what was asked of him so unnerved me that I remember complaining about it to others on the staff.

Generally, his attitude was characterized by an unconcealed show of superiority not only over his colleagues but over his supervisors. He gave every indication that he felt that his knowledge of the law, maturity of judgment, and experience in affairs was greater than that of his colleagues or his supervisors. My experience with him gave me no reason to share his opinion.

Mr. Green has asked me to submit an affidavit in his behalf, setting out some of the facts stated above, par-

ticularly as to whether or not I had ever heard him characterize anybody by the term "imbecile" or "ignoramus"; the extent to which he used office services and facilities for personal business, and other matters. I declined to furnish Mr. Green with such an affidavit for the reason that while many, but not most, of the statements therein contained were literally true, the affidavit did not present the whole truth as I knew it. For example: I have on occasion interrupted Mr. Green in his office when he either was dictating a personal letter to his secretary or conducting a personal telephone call, but I have no means of knowing whether or not this was an infrequent occurrence or whether it was a privilege that he abused. I had no reason to know whether he was absent from his office on personal business that he did not account for, as I did not feel obliged to monitor the activities of the men on the staff. Initially, Mr. Green's office was two doors removed from mine; later, his office was across and down the hall from mine, and finally, his office, which he shared with Mr. Gordon, was adjacent to mine. During this last period I complained about the traffic through my office, with the result that for the most part the door between the offices was closed. As a consequence, I had no means of knowing at first hand what went on in Mr. Green's office or between him and his associate or his secretary.

In Witness Whereof, I have hereunto set my hand this 16 day of October, 1952.

Thomas F. Wilson
Thomas F. Wilson

Subscribed and sworn to before me
this 16th day of October, 1952.

Frank E. Cole
Investigator

Exhibit 5

District of Columbia, ss:

I, James K. Coolidge, hereby depose and say as follows:

In early 1951, Mr. Green and myself had adjoining offices with a plaster or wall board partition between us. The only thing I know about this first charge against Mr. Green has to do with his stenographer, Mrs. Edith Smith. One day I heard Mr. Green's voice through the partition which was only possible when he would talk loud. He sounded angry but I could not hear what he was saying nor did I know who he was talking to. I assumed from his raised voice that there was some sort of difficulty going on.

When he stopped talking, Mrs. Smith immediately came into my office and she was in a disturbed condition and crying. She told me that no one had ever talked to her like Mr. Green had and it was all because she had failed to bring her notebook when he had called her to come in. There was only about ten feet separating Mr. Green's desk and Mrs. Smith's, which was just outside Mr. Green's door. Mrs. Smith said she would not work for him any longer and was going to quit. I suggested she talk with the General Counsel, Mr. Reid, which she did. Mr. Reid assigned Mrs. Smith to me and she stayed with me for some time. No, I couldn't hear what he said, I could only hear his voice which sounded angry.

He never called me an ignoramus or an imbecile. However, from my observations and discussions with Mr. Green I concluded he thought everyone who disagreed with him to any appreciable extent was at least that. His mental attitude would not permit discussion of any matter in an orderly and constructive manner. He refused to consider the other side of any question. To disagree with him was to provoke his ire and contempt. He was intolerant of any viewpoint contrary to his own. At one time we were discussing something—I don't remember what it was—and he made the insulting remark to me that I would know better if I had ever been inside a courtroom. After that

remark I carefully avoided all discussions with him upon which there could be any difference of opinion.

I have no direct knowledge of Mr. Green's improper use of Government office and property, or personnel, or improper absences from the office.

I do have some knowledge of Mr. Green's disrespect for authority.

At one time during the early part of 1951, I was appointed and served for a short period of time as Acting Assistant General Counsel, and work would come to me, some of which I would distribute to Mr. Green. I used to call him on the phone and discuss matters with him and perhaps at times I would ask him to drop by my office. At this time his office was across the hall from mine. I remember one day I called him on the phone and said, "Hello Abe," and he instantly said "It is just as close for you to walk in here and see me as it is for me to come in your office." I hadn't asked him to do anything and, in fact, I hadn't intended to ask him to come to my office. That is the only incident that I know of my own knowledge as to his disrespect to authority.

I have the further information about Mr. Green on this charge which is through Mr. Tom Wilson, the Assistant General Counsel who was Mr. Green's superior. I have seen Mr. Wilson—I would say on two or three occasions—white and shaken after talking in his private office with Mr. Green. Mr. Wilson related to me the conversation he had had and the difficulties in general he was having with Mr. Green. I do not remember the exact matters which were causing the difficulty between them.

In Mr. Green's answer, he lays considerable stress on the fact that all lawyers in the General Counsel's office were wrong in the McClendon case—and that he was right. I can only say that the case is being defended on a theory that is contrary to Mr. Green's conclusion as to the applicable law and that I firmly believe Mr. Green was wrong. If pertinent, I believe any unbiased examination of the

legal issues in the McClendon case will justify this conclusion.

It wouldn't seem that it matters in this proceeding, however, whether Mr. Green was right or whether he was in error as to the law in the McClendon case. But his unyielding and scornful opinion of other lawyers in regard to this McClendon case, as expressed in his answer, is illustrative of his general attitude toward anyone who disagrees with him.

In Witness Whereof, I have hereunto set my hand this 15th day of October, 1952.

James K. Coolidge

Subscribed and sworn to before me
this 15th day of October, 1952.

Frank E. Cole

Exhibit 6

District of Columbia, ss:

AFFIDAVIT

I, Milton Gordon, being first duly sworn, depose and say as follows:

I am an Attorney-Advisor in the office of the General Counsel of the Federal National Mortgage Association, having commenced my employment in October 1951. I was the sole occupant of Room 857 until January 1952 at which time Mr. Green and his personal secretary, Miss Cahn (now Mrs. Rosenthal), who had previously occupied the office across the hall, were both moved into Room 857. Mr. Green, Miss Cahn and I shared Room 857 from January 1952 until some time in June 1952, and my desk was just a few feet away from Mr. Green's desk; Miss Cahn's desk was also close to Mr. Green's desk.

With reference to your question as to Mr. Green's treatment of Miss Cahn, I must say that during the 6 month

period we were together in Room 857, he was frequently cross and rude to her; the occasions when he was civil toward Miss Cahn were few and far between. His attitude toward her showed no consideration for her feelings and, at times, he was insulting and on one occasion, he swore at her in my presence, because she had apparently incorrectly typed something he gave her to do. In fact, after he came into my office and I observed his manner of conduct, I said to him, "Abe, I think you are pretty hard on the girl; after all, she is quite young, and even though you may have occasion to criticize her, I think you are very inconsiderate, and I don't think you should shout at her; I don't believe you should order her about as though she were a servant girl; nor do I think you should lose your temper and swear at her." There were two or three times when I had occasion to call this matter to Abe's attention either at lunch or outside of Miss Cahn's presence; on one occasion he said he realized that he was short of temper and would try to control himself in the future. During the first few months we were together, I lunched with Abe quite often and was closer to Abe and probably more intimate with him than anyone else in the General Counsel's office. On two occasions that I remember distinctly I came into the office and found Miss Cahn was crying. I asked her what it was all about and she replied that "Mr. Green bawled me out again"; I don't remember the reason she gave me.

A short time elapsed and he had friction with me for the reason that I found out he had instructed Miss Cahn that his personal work was to take preference over my office work. I discovered that in this way: When I gave Miss Cahn certain dictation, and she didn't get it out, I inquired as to the reason for the delay. Miss Cahn replied: "I must tell you the truth, Mr. Gordon, I had to write some personal letters for Mr. Green." These letters were personal letters he had dictated to her in connection with the construction of his house. I said to Miss Cahn "I don't believe his personal letters should interfere with my work and I want you to tell me when that happens again." Well,

it didn't happen too often after that; i.e., he didn't stop giving her personal letters, but I believe Miss Cahn must have told Mr. Green of my complaint, because I didn't have too much difficulty in getting my work out after that. Although Miss Cahn was to act as secretary for both Mr. Green and myself, Mr. Green was of the opinion that his office work should take precedence over mine; and rather than have any argument with him about that, I occasionally asked Mrs. Smith, Mr. Wilson's secretary, to do work for me, so as to avoid as much friction as I could with Mr. Green.

On one occasion when Mr. Green and I were discussing a legal problem he used the word "imbecile" or something to that effect. Mr. Green mentions the case in his answer; it was a case where he did not agree with the conclusion that I had reached in a legal opinion which I had prepared. I pointed out to him where I thought his view was not supported by the cases and when I cited a case in point which fully supported my contention he was unable to reply, so he just exploded and, to my best recollection he said either that "You are an imbecile," or "You talk like an imbecile," and that ended our discussion. I restrained myself at the time and simply said to him that if he was unable to discuss a legal problem in a calm and dignified manner without losing his temper, it would be advisable thereafter to limit our conversations to "Good morning" and "Good night." After that, Mr. Green and I had very little to say to each other. Miss Cahn was present at the time and remarked to me later that I should have struck him for making that uncalled for remark. Miss Cahn further stated that Mr. Green had similar run-ins with personnel in other branches of FNMA and mentioned the incident that arose in connection with Mr. Canfield when she had to apologize for a similar blow-up by Mr. Green.

Mr. Green in his answer asks the question why didn't I report the imbecile incident to my superior, Mr. Wilson, or why I didn't strike him at the time. Mr. Green has compelled me to tell you the reason why. As Mr. Green and I are both of the same religious faith, I tried my utmost

to shield him. I didn't want to hurt him; and I wished to avoid an incident or a fight in the office between Mr. Green and myself which I felt would not rebound to the benefit of either one of us. I therefore said nothing about the incident but I understand Miss Cahn reported it to Mr. Wilson. I might also state in this connection that when Miss Cahn complained to me about the rough treatment she was getting from Mr. Green I suggested that she also make allowances for him and remember he was very high strung and extremely sensitive; that Mr. Green was probably operating under tension; he was building his home and he seemed to be constantly troubled about his construction problems. I remember saying to Miss Cahn: "Miss Cahn, both of us should be charitable with him and make allowances for him, maybe in due cource of time things will work out and you will be moved from this room; I contemplate making a request to Mr. Wilson that he take me out of this room; let's not stir up anything now." I might say that this is probably one of the reasons why Miss Cahn didn't resign a long time ago. At my request, I was moved into an office which became available when Mr. Wilson resigned. When Mr. Wood moved into Mr. Wilson's office, and Mr. Wood's office became available, I said to Mr. Wood that if I wasn't taken out of this room I would be obliged to seriously consider tendering my resignation because I could not work in the same room with Mr. Green any longer.

Mr. Green had the habit of throwing papers at Miss Cahn. He would never think of leaving his desk and walking over to her desk to hand her a book or document as I would do. Her desk was across the way and he would just fling papers at her. I don't think he actually intended to hit her with the documents. He was just very crude and discourteous in his manner and it seemed as though he took delight in upsetting Miss Cahn. He would order her around and would rarely use the word "Please." He would always say "You come over here," or "Come here in a hurry," "Better come quick," and other similar comments. I don't remember his throwing a telephone

book at her, but as I said there were a number of occasions when he did throw papers at her in a fit of temper when he wouldn't like what she had prepared and wanted her to do it over again.

As an illustration of his rudeness, let me give you this example: I would call Miss Cahn over to my desk to take dictation. The phone which Mr. Green and I shared would ring. He would expect her to stop taking my dictation and answer the phone. I remarked to him at one time: "Abe, when Miss Cahn takes your dictation and the phone rings, even though most of our incoming calls pertain to your house and are from your suppliers or your laborers, nevertheless I have always extended you the courtesy and taken the calls rather than interrupt your dictation. I think you ought to reciprocate this courtesy and answer your own phone when it rings at a time when Miss Cahn is engaged in taking dictation from me."

With reference to his swearing at Miss Cahn: I remember one occasion in particular when he shouted at her, "God damn it to hell, can't you do anything right?" or words to that effect. I remember the occasion very well because I told him after Miss Cahn left the room that I thought cuss words were uncalled for at any time. He admitted he shouldn't have gone that far.

I might say he called me another name once which I thought was more or less of a compliment. He observed that I was conscientious in doing the work assigned to me and getting it out promptly. He said to me, "They won't appreciate that kind of service in this office; you are just an eager beaver," and I replied, "I don't mind being called an eager beaver." In his answer, Mr. Green makes the statement that I gave that name to myself.

I might further say that Mr. Green had a penchant for calling other people in the office names. At the very outset, when he moved into this room he said there wasn't anybody in the entire General Counsel's office that knew anything about law. He observed that Mr. Wood's knowledge of the law was very meager; Mr. Coolidge was likewise un-

informed and on one occasion Mr. Green said that he didn't think Mr. Coolidge ever saw the inside of a court room; in other words, implying he had never tried a lawsuit. Mr. Green also had occasion to remark to me that Mr. Wilson was an ignoramus or something of that nature, i.e., entirely ignorant and uninformed as to the law; and Mr. Green didn't omit Col. Reid in some of his disparaging comments.

As to the charge of improper use of Government property—I don't know to what extent Mr. Green may have used Government property. As I have indicated, he utilized the services of Miss Cahn for the preparation of personal letters involving the construction of his home; also, in making numerous telephone calls to his suppliers and mechanics here in town in connection with the construction of his home. Mr. Green was his own general contractor and subcontracted the construction to various subcontractors and had to supervise every phase of the construction, which he did from this office. As to the number of his personal telephone calls—it is difficult to state exactly how many calls he would make during a day, but I got the definite impression that most of the calls that came into the office dealt with his personal business. I also answered his phone when Mr. Green and Miss Cahn were both out of the office. The bulk of the calls I took for him were personal calls involving his house; as to the number of personal phone calls, I took or the number that he made, I have no way of estimating, but they were quite numerous. Apart from the nuisance of having to take his personal calls, Mr. Green's constant telephoning would interfere with the work of Miss Cahn and myself. Mr. Green has what you would call a "booming voice" and when he talks on the telephone one can't dictate. I was frequently obliged to take Miss Cahn into Mr. Wilson's office to give her my dictation. On some occasions, if I had any work that required concentration, I was obliged to leave the office and go across the hall; it was extremely difficult to work with him in the same room as he had no consideration whatsoever for the other fellow.

With respect to the charge of improper use of Government personnel—I did, on a number of occasions, see Miss Cahn do his personal work. One instance I remember was when she had his bank checks spread out over her desk trying to reconcile his bank statement; on another occasion she told me she was writing a letter for him to one of his contractors and "just as soon as she finished it" she would take my dictation. On a number of occasions Miss Cahn told me that my work was being delayed because Mr. Green had given her his personal work and she had to get that out first. In fact, on one occasion, I said "Go ahead and finish his personal work this time as we don't want to get into an altercation with him today." When this occurred a number of times I said to Miss Cahn, "You are to give my office work priority over his personal work." As to how much of Miss Cahn's time he used for his personal work I don't know. When he had her across the hall all to himself with no other lawyer sharing her services, she said she devoted a great deal more of her time to his personal work than when he moved into my office. When he came over to this office, I doubt if his personal work took three-fourths of her time, because it wouldn't have been possible for her to have gotten out all of my work if she was devoting three-fourths of her time to his personal work. However, it is true that Mr. Green's personal work, i.e., the personal letters, personal telephone calls, filing of his personal matters, did take a substantial part of her time during the period when Mr. Green shared my office. As far as the telephone calls, most of the incoming and outgoing calls in this office were his personal calls. I had occasion to comment to Miss Cahn on this. I said "Why doesn't he make his own personal calls?" Her reply to me was: "You ask him."

With reference to his absenting himself from the office, it is true that he had a custom of taking long lunch hours. He would usually leave early—about 11:30 or sometimes 12 o'clock—and he would come back here about 2:00 or 2:30. It was exceptional for him to go to lunch and come back within the required time. On one occasion, I went

to lunch with him and then he drove me over to one of his supply houses, Barber and Ross. He said "Come along with me, I have some supplies to pick up at Barber and Ross' which I have to get out to the building this afternoon." I went with him and he had me sit in the car outside the Barber and Ross supply house about one-half hour. I got out of the car to look for him, to tell him I was going back to the office, as on that occasion I think we were both gone for a couple of hours. I commented to him on that incident: I said: "'Abe, the next time you want to go to one of your supplier's, you go without me." On another occasion we went to lunch; he was about to take me to some lumber yard and I said "Thank you, I am not interested in watching your car again while you do your shopping." On another occasion he took me out to his house during the lunch hour; he wanted to show me how far he had progressed with the construction. I remember a conversation with him when he spoke about all of the vacant land he had bought adjacent to his house and contemplated constructing a house for a party who bought one of his lots. I said to him: "Abe, if you are going into the real estate business, I would suggest that you get yourself an office." He just looked at me and made no comment. He told me later that the house construction project fell through.

Mr. Green frequently left the office early in the afternoon—I would say on the average of two or three times a week; he would leave at 4:00 or 4:30 and there were some occasions when he would leave even earlier than that. He would never tell anybody where he was going. I had occasion to comment to him about that and I said: "People frequently ask me where you are or when you are coming back; I think you ought to tell us." But he never adopted the suggestion or let either Miss Cahn or myself know when he was coming back. I don't know whether he got anybody's permission to leave early. He would usually arrive on time in the morning; i.e. he was not late very often, but it was these long lunch hours and early departures that were very frequent.

As to Mr. Green's respect for the authority of his superiors—I never witnessed any situation when he actually flaunted authority or showed disrespect but I must say this: He did on one or two occasions comment to me about the difficulty he was having with Mr. Wilson, who was his immediate superior at the time, in connection with some memorandum he had drafted and that his view of the law and Mr. Wilson's view were not the same and that he was not disposed to revise his memorandum as requested by Mr. Wilson. That is all I can recall on that. I don't know the merits of the case but simply that Mr. Green made the comment after coming out of Mr. Wilson's office that he was not going to rewrite his memorandum. This happened a few times.

I would like to make a statement with reference to Mr. Green's answer: Sometime prior to Mr. Green's leaving, I think it was the first week in September, Mr. Green called me on the phone and asked me to come into his office. He was still sitting in this room and I walked in and we exchanged greetings and he then said: "Milton, I want you to give me an affidavit," I replied: "Abe, I am not giving any affidavits. You must know that I couldn't help you very much by an affidavit, and besides I have given a statement to Jim as to some of these items that you have been charged with. In connection with the building of your house, you are not disputing that, are you? i.e., the fact that you did take a lot of time out from the office to build your house?" He said: "Well, that is not important," and then he went on to say "Did I ever call you an imbecile or ignoramus?" My reply was "Abe, I don't remember exactly whether you called me 'imbecile' or that I 'talked like an imbecile' but I know you called me a name which I didn't like and I had all I could do to restrain myself at the time. Miss Cahn later commented on it and said 'Why didn't you hit him?'" Mr. Green went on to say: "I didn't call you 'imbecile' what I did say was 'That this is an imbecilic statement.'" To which I replied: "Whatever the exact words you used, Abe, the impression you gave was that the person who was making

the statement was an imbecile." Then Mr. Green said "Did you ever hear me say 'God damn it to hell?'" I said "Yes, Abe, I remember that distinctly and you should remember I called you for it and told you that you should not have cussed at Miss Cahn." After this exchange of questions and answers, I asked him "You really are not going to fight this case, are you Abe? Why don't you try to get yourself another job?" He said "I couldn't get a job elsewhere at this grade." I said "Well, even if you have to come down a grade. No matter what the outcome of this proceeding is, it is not going to help you any." His answer was "Well, it is too late to talk about that now." This was the sum and substance of our conversation. I am sorry to say that in his report of this conversation in his answer, Mr. Green has not quoted me correctly.

In his answer Mr. Green also has discussed an opinion which I rendered in connection with the question as to whether the statutory exemption relative to the payment of fees and costs would be applicable to FNMA. As previously stated, that was the opinion Mr. Green and I has occasion to discuss at the time he lost his temper and used the "imbecile" phrase. This case is merely another instance where Mr. Green has held himself out as the *only* one in the entire Office of the General Counsel who has any "knowledge of the fundamental principles of the law." The important question is not whether Mr. Green or I have correctly interpreted the cases cited in my opinion which are referred to in his answer, but whether this is just one more indication that Mr. Green is opinionated and egotistical, which explains why it was so difficult, if not impossible, for other attorneys to work together with him. Mr. Green, unfortunately, is unable to consider both sides of a question; and believing that his views on the law are infallible, he was seldom able to conduct a calm discussion with his colleagues in the office. In my opinion, it was this intolerant and arrogant attitude toward other people and their views that is the root of all of Mr. Green's difficulties.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of October, 1952.

MILTON GORDON

Subscribed and sworn to before me this 15 day of October, 1952.

FRANK E. COLE
Investigator.

Exhibit 7

DISTRICT OF COLUMBIA, SS:

AFFIDAVIT

Being first duly sworn, I hereby depose and say as follows: My name is Elaine Shirell Rosenthal, formerly Miss Elaine S. Cahn. I was secretary to Mr. Green from February 26, 1951 to February 1952. I worked for Mr. Green only for that period and then for Mr. Green and Mr. Gordon from January 1952 to June 1952.

Charge 1(b), improper conduct toward office personnel. The first instance in which Mr. Green lost his temper was when he asked me to call Mr. Wise of the RFC. I did not know who Mr. Wise was, as I had not been here that long. When I asked Mr. Green what Mr. Wise's first name was, he got very angry and threw the RFC telephone book at me which landed on the floor, and told me that I should look it up myself, which I did. In my first statement I said that Mr. Green threw a telephone book at me on two occasions. At this time, I can only recall this one incident. As a result of this incident I became so upset that I was caused to cry.

Many times Mr. Green was very sweet to me and considerate, and on many other occasions he was very rude. In calling me to take dictation, Mr. Green would say "come here" and "do this" and "do that." On other occasions Mr. Green would say "will you please come do this or that." I want to bring out this point, that when Mr.

Green would lose his temper and speak rudely, it was actually in a fit of anger. I do not think he really meant to hurt me, but it would hurt. It seems that when I was working alone for Mr. Green it did not occur as much. During the period I was working for both of the attorneys he seemed to get angry more often. Ver often he lost his temper and got short with me during that four months' period.

For instance, one day just before he was getting ready to go to lunch, he asked me to get the White House on the telephone—so I called up the operator down stairs and asked for the code number which she told me was 190. Mr. Green dialed it himself and found out that it was the Capitol, and he got extremely angry and said "God damn it to hell, when I ask you to do something, why can't you do it right? that was not the White House", and he slammed the telephone down. In substance that is what Mr. Green said. I told Mr. Green that was the number the operator had given me.

In June I decided I could not take any more, and went in to speak to Col. Reid. In the meantime I had an offer to work for the OPS, which was a grade higher that I was getting at the present time. Then I went in and spoke to Col. Reid and told him exactly what had been happening and of the offer I received from OPS. He then told me that if I stayed, he would try to do something for me where I would be happy. One day Mr. Green and Mr. Gordon were discussing a legal problem and Mr. Green evidently did not agree with Mr. Gordon's conception and called him an "imbecile."

Charge II, improper use of government office space and government property. First of all, I typed up the specifications to his house which was about, I would say, from 25 to 30 pages which was done on government stationery. For his personal letters, he had his own first sheets of stationery and envelopes. For the carbon copies I used government onionskin and government folders. One way

of putting it, is this. When I first started working for Mr. Green alone, if I had not had his personal work to do, I would have been doing practically nothing. I had on the average of about three official letters a week. For a while, I was doing nothing but looking at the four walls. The first personal work I did for Mr. Green was in connection with a brief or answer to the Alexandria Water Works. This was typed in a rough draft form. This job occupied my time for about a period of two or three weeks at various intervals. I cannot recall the exact amount of time spent on this job. As I recall, an hour on some days, up to as much as four to five hours in a day. If it had not been for that, I would have been doing practically nothing.

Mr. Green kept one small file folder in the Government file cabinet which contained the letters that went to his family and a few friends. In the large desk drawer, which is deep enough to hold file folders, approximately 8 file folders in which he maintained two files on some property that he owned in New York, a Merrill, Lynch, Pierce, Fenner & Beane file, and an A. L. Green personal file, and I believe, a tax file, and some others that I do not specifically recall. Every time statements came in from Merrill, Lynch, Pierce, Fenner & Beane, I filed them. Any letters that were written in connection with the property he owns was filed in there and so on. When he was building his house, he kept his files on that subject in his brief case and took them back and forth. He had brief case files, desk drawer files, and one small file folder, which covered a period of two or three years, that was kept in the Government file cabinet. The only book I kept for Mr. Green was his check book. I cannot recall exactly the number of personal letters written by Mr. Green; the number varied from none some days to very infrequently five a day.

I cannot estimate the number of times personal telephone calls were made for Mr. Green. However, I recall one day Mr. Green took the classified directory and called

numerous building supply companies for estimates in connection with the building of his house. He went through page after page in the classified section calling the various building supply companies for estimates. At his request on various occasions, I called L. M. Stevens, Mr. Collins, Sr., of Collins Millwork Company, Cushwa Brick Company; and others. The only files that I actually set up were files for the house. He did not require me to keep check stubs and maintain his personal check book, but I did that on my own initiative.

Toward the completion of his house he started to bring his personal car down to work and sometimes I would go out once a day to put a nickel in the parking meter where his personal car was parked and sometimes twice a day. Sometimes the car would be in front of the building, and other times two or three blocks away. This continued over a period of approximately two months.

On one occasion during my lunch hour I had to go to an eleventh street electrical store to pick up a package. One time I had to perform an errand to Internal Revenue.

The period in which three-quarters of my time was engaged in personal work extended over a period of approximately one month. This occurred during the period Mr. Green was building his house. It is not a correct statement to say that I worked three-quarters of my time on his personal affairs during the entire period I was associated with Mr. Green.

On numerous occasions Mr. Green would interrupt me while I was working on official business to request me to make his personal calls for him. On many occasions my official work was delayed by Mr. Green's interrupting me to make personal telephone calls. That was the majority of his interruptions. He never interrupted me while I was doing official work to take any of his personal correspondence.

Mr. Green would leave around 12 and come back about 2 or 2:30 and on a very few occasions even 3:00. When

he went out he would say he was going out to lunch. On a few occasions he would go out around 2:00 and come back around 2:45 or 3:00. Mr. Green would go out maybe one week twice on the long lunch hours; maybe another week it would be once a week. Mr. Green never put in a leave slip when he took his long lunch hours. I know this for a fact because I made out the leave slips.

One morning I got in the office at 8:20. Mr. Green was in before me and was sitting at his desk reading his paper. I said "good morning" and he did not answer me. I hung my coat up and turned the calendars and told him that I was going down stairs for coffee. He told me just a minute and to come over by his desk and sit down. He said that I did not ask him to go down stairs any more; prior to this when I was working for Mr. Green alone, I had asked him every morning if I could go down stairs for coffee, even though this was on my own time the majority of the time, he said it was all right with him, and that I needn't ask him anymore. On a few occasions I would get back to my office around 8:50, but the majority of the time I was back at my desk by 8:45, which was the official start of the work day. When I started to work for both attorneys, Mr. Green and Mr. Gordon, I asked Mr. Green if it was all right for me to continue going down stairs for coffee. He said it was. I also asked Mr. Gordon the same question and he said it was all right, too. On this particular morning referred to above, when I told Mr. Green that I was going down stairs, he called me over and said sit down, rather harshly. Mr. Green said that I was very rude and discourteous and was never around when he wanted me, but yet I always seemed to get his work out. He told me that I could not go down stairs any more and I asked him why not since it was on my own time and was very rare that I got back beyond the official start of working hours. He then told me if I did not like the way things were done around here, I knew what I could do. This happened not long after I started to work for both attorneys, approximately in-

March of 1952. As a result of the manner he spoke to me, I became so upset that I left the room and cried.

On one occasion I had just finished typing an official memorandum for Mr. Green. I got up from my desk and put the memorandum on Mr. Green's desk. Mr. Gordon, thinking I was through with Mr. Green's work, asked me if I would take a letter. Before I could say anything, Mr. Green took the memorandum I had put on his desk, initialled it on the file copy, and got so angry he threw it on the floor at my feet.

My relationship with Mr. Green was at times, and quite a few times, very pleasant. He was considerate of me and could not do enough for me and when he said some remarks to me that were not so nice, I think, and truly believe, that it was in a fit of anger and not really meant to hurt.

In WITNESS WHEREOF, I have hereunto set my hand this 16th day of October, 1952.

ELAINE S. ROSENTHAL.

Subscribed and sworn to before me this 16th day of October, 1952.

FRANK E. COLE,
Investigator.

Exhibit 8

AFFIDAVIT

DISTRICT OF COLUMBIA, ss:

Being first duly sworn, I hereby depose and say as follows:

I, LOUIS H. QUINTER, Loan Examiner for FNMA, state that my relationship with Mr. Green was that, on occasions in preparing letters for the signatures of officials of FNMA, it was necessary to clear such letters through Mr. Green with respect to any legal points that may have been included therein. My contacts with Mr. Green were infrequent, maybe once a week or perhaps once a month.

During my contacts with Mr. Green it was difficult to change his opinion about anything. On one occasion a letter was prepared and routed through Mr. Green for clearance with the result that the letter was personally brought back to me with the request that certain inconsequential changes be made since a certain phrase represented a duplication. The requested change did not in any way change the intent of the letter, nor did it involve a legal matter, and Mr. Green was very vehement in his request that the change be made, which would have required the rewriting of a two page letter. The matter was referred to Mr. Gilbert, Assistant Loan Manager, who agreed with me that the change was unnecessary. The matter was later discussed with the General Counsel with the result that the letter was mailed as originally prepared.

I cannot recall whether or not Mr. Green ever made any derogatory remarks about my capabilities and am quite certain that he made no such remarks directly to me. Mr. Green was never actually rude to me but was difficult during contacts to such an extent that I would, if possible, avoid any business contacts with him. I would prefer to let a matter ride or wait until I could see one of the other lawyers rather than go to him, my reason being that I never knew what kind of reception I would receive or what arguments might ensue. As a consequence, I do not believe I had any business contacts with Mr. Green during the past five or six months.

I have no knowledge of the other charges brought against Mr. Green with respect to his conduct in the Legal Division.

In Witness Whereof, I have hereunto set my hand this 16th day of October, 1952.

Louis H. Quinter.

Subscribed and sworn to before me this 16th day of October, 1952.

Frank E. Cole.

Exhibit 9

DISTRICT OF COLUMBIA, SS:

AFFIDAVIT

I, EDWARD E. WENDELL, being first duly sworn, depose and say as follows:

I am Assistant to the President of Federal National Mortgage Association.

During the period between April and November 1951 I was located in the Philadelphia office of the Housing and Home Finance Agency and *not* in the FNMA office in Washington. From November 1951 to January 1952 I occupied space in Room 860, Lafayette Building with MR. A. L. Green, Miss E. Cahn, Mr. A. L. Green's stenographer, and Mr. Tyler B. Green. Mr. A. L. Green was assigned to the Legal Branch and I am assigned to the Office of the President; therefore, during this period I had no supervision of, nor specific relationship with Mr. A. L. Green. This statement covers observations of Mr. Green's conduct during the period from November 1951 through January 1952 only.

I did not observe any discourtesies on Mr. A. L. Green's part, either toward his stenographer or other members of the Legal Branch, during this period, although it did appear obvious that his relationship with other attorneys of the Legal Branch was not entirely congruent.

I have no specific knowledge as to the use of Government equipment or supplies for his personal benefit by MR. A. L. Green other than the telephone. He made and received numerous telephone calls which related to his personal business, particularly in connection with the construction of his home. The number of personal telephone calls varied, but may have averaged as many as five or six a day. While occupying the same office it was impossible to avoid overhearing conversations. On occasions I answered the phone and took down telephone num-

bers for him to call back; on other occasions when he was there I heard the conversations which related to personal business. During this same period Mr. A. L. Green did request his stenographer to make a number of personal calls on the telephone for him and on one occasion at least he did request her to put money in a parking meter. Other than that, I cannot state how much of her time was used in connection with Mr. A. L. Green's personal business, nor can I state the amount of filing space or office equipment or supplies that were used by him in connection with his personal business.

I did observe that during this period Mr. A. L. Green would occasionally arrive late in the morning, absent himself for longer than a normal lunch period, and on several occasions, leave early. Whether he was permitted to absent himself or whether it was on personal or Government business I am unable to state.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of October, 1952.

EDWARD E. WENDELL

Subscribed and sworn to before me this 15th day of October, 1952.

FRANK E. COLE
Investigator

Exhibit 10

DISTRICT OF COLUMBIA, SS:

AFFIDAVIT

I, TYLER B. GREEN, being first duly sworn, depose and say as follows:

I am Assistant to the President of Federal National Mortgage Association.

I was associated with Mr. Green only to the extent that I shared the same office with him for the period from the middle of September 1951 until the middle of January

1952, during which time I was actually in the office for six periods of not exceeding one week each time.

With reference to improper conduct toward office personnel—during those six one-week periods that I was in the office at all, I didn't see any indication of mishandling or mismanagement as far as he was concerned with the girl. As to any conduct toward other personnel: Mr. Wendell was there part of the time, just the four of us in the room—Mr. Wendell being a Field Representative as I am, we just didn't get into any of the discussions with the other legal personnel. I would say he was a little harsh in his talk—in his tone of voice—to Miss Cahn occasionally, but I thought that was more or less his way of talking. I never heard him swear at her. He was always very courteous to me.

As to improper use of Government office and property—during one week's period I was in the office I noticed he used the telephone considerably, apparently in connection with the home he was building. I would hear him call the contractors and other people; he had a loud voice and in a small room we couldn't keep from hearing what he was talking about. He did use Miss Cahn in drawing up certain papers and writing certain letters in connection with the building of the house. I had occasion to notice that. I wouldn't have any way to measure the extent to which he used Government office and property for personal business. During the time I would be in Washington much of my time was spent in conferences in other offices in the building. I have no knowledge except what I would hear on the telephone. As far as Miss Cahn going out of the office for him, I have no knowledge of that.

As to his improper absences from the office—at various times when I came into the office he wouldn't be there—whether he was outside the office or whether he was in Mr. Reid's or other legal offices, I wouldn't know. I have no knowledge as to whether he had signed leave slips or even whether he was on leave.

As to the charge of refusal to respect authority of superiors—I would have no knowledge of any of those things. I didn't work directly with him; really had very little contact with him.

In Witness Whereof, I have hereunto set my hand this 15th day of October, 1952.

Tyler B. Green

Subscribed and sworn to before me this 15th day of October, 1952.

Frank E. Cole
Investigator

Exhibit 11

District of Columbia, ss:

I hereby depose and say as follows:

I, Harry M. Gilbert, am Assistant Loan Manager of FNMA. My contacts with Mr. Green have been in the nature of seeking legal advice in connection with the Association's business on matters relating to the Loan Branch. Where administrative problems have legal aspects we, of course, contact someone in the Legal Division. My contacts have not been very frequent, subsequent to the time that he was first assigned to the mortgage work, which was shortly before the transfer of FNMA from RFC to Housing and Home Finance Agency—formerly the Association was affiliated with the RFC, and at that time we were all RFC employees assigned to the mortgage work.

It was shortly before the transfer that Mr. Green was assigned to the mortgage work and I was asked, at that time, if I would do whatever I could to help him become familiar with the work, and spend more time with him than would normally be required. After working with Mr. Green for a short time my contacts became infrequent due to the fact that I then told Mr. Reid that I did not want to work with Mr. Green any longer because my efforts were unprofitable; it was a waste of time since he could

not be kept on the subject I wanted to talk about; he appeared to me to be very narrow in his outlook on the various problems; I could not discuss matters with him as he had his own view-point on every matter, and as far as he was concerned there was no other view-point. Even if you could get an answer out of him it usually concerned the administrative aspects of a question; as an example, after an administrative decision had been made concerning an agreement that we proposed entering into with a borrower, or corporation, we would then want to know whether the terms of such agreement were acceptable from a legal stand-point. Invariably he attempted to change the administrative decision and would argue that side to the end that an answer on the legal side could not be obtained. I do not think it would be possible for me to find any concrete examples by way of illustration, as I did not keep any records or working papers on such matters.

I recall that an employe under my supervision, or another employee of the Association, said that Mr. Green had made some uncomplimentary remarks about this employee because they had disagreed on some point. I do not recall the exact words used, or the subject matter involved, but I believe it had to do with a letter that the employee had prepared. I do not remember the exact words—it might have been that he was "stupid" or an "ignoramus" or a word of similar meaning. As I recall, I personally discussed the incident with Mr. Reid and told him about the disagreement and Mr. Green's remarks. I believe the employee was Mr. Quinter.

I have no direct knowledge of improper conduct by Mr. Green toward other employees. My association with him has been either on brief visits to his office or when he came to my office, so I have had little opportunity to observe his conduct other than with me. As he is located in another part of the building, I have no knowledge of his improper use of stenographers or equipment. I have been in his office on at least one or two occasions, and

while I was there he made telephone calls to supply houses or contractors in connection with a house he was building. I have had no opportunity to know whether his absences from the office were authorized as he is in a different branch.

I wish to add to the first part of my statement that at some time, I believe about a year ago or less, after I had told Mr. Reid I did not desire to work with Mr. Green any longer but that I preferred to work with other members of the Legal Division, Mr. Reid asked me if I would again be willing to undertake to work a little longer with Mr. Green to see whether there would be any change in his attitude. I did try working with him again, but due to his arrogant attitude nothing appeared to be accomplished in any conference I had with him, and it was practically a waste of time to try to talk with him. So I then went back to Mr. Reid and again told him I did not think it was worth while to continue trying to work with Mr. Green as there was no change in his attitude. Consequently, I told Mr. Reid I would prefer not to work with Mr. Green any more.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of October, 1952.

HARRY M. GILBERT

Subscribed and sworn to before me this 16th day of October, 1952.

FRANK E. COLE
Investigator

Exhibit 12

DISTRICT OF COLUMBIA, ss:

I hereby depose and say as follows:

I, MARY L. SMITH, Secretary (Stenography), was employed by FNMA as secretary to Mr. Thomas F. Wilson from about October 1949 to April 1952, and have been employed by Mr. J. Arthur Wood from June 1952 until the

present time. I worked in the room next to Mr. Green's room. Occasionally I took dictation from Mr. Green. He was nice to me, as he was glad to get someone to take his work. He always treated me all right. I would go in and take the work and go ahead. During the few instances I took some work for Mr. Green there was no indication of discourtesy. I can say that I had no way of knowing what was going on in Mr. Green's room as the door was always closed between the rooms, except on occasions when Miss Cahn asked me to listen for her phone or she would listen for mine during the lunch period. When we returned the door would be closed. We wouldn't always close the door immediately—sometimes the messenger or someone would pass through and leave the door open, but generally the door was kept closed.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of October, 1952.

MARY L. SMITH

Subscribed and sworn to before me this 16th day of October, 1952.

FRANK E. COLE

Exhibit 13

DISTRICT OF COLUMBIA, SS:

AFFIDAVIT

Upon first being duly sworn, I hereby depose and say as follows:

I, EDITH A. SMITH, Secretary, was assigned to Mr. Green when I came to the Federal National Mortgage Association, November 14, 1950. I worked with him until approximately February 1, 1951.

When I was first assigned to Mr. Green he informed me of the setup of the General Counsel's office and my duties in connection therewith. On the first occasion, Mr. Green criticized me sharply when I answered the telephone in

Mr. Coolidge's name. Mr. Coolidge occupied the same office. He told me that it was his office and to answer the telephone in his name inasmuch as I had been assigned to him as his secretary. I would say he was gruff in his manner when he spoke to me at this time.

On another occasion he flew into a rage when he called for me. I was sitting at my desk when he buzzed for me. In response to his call I went into his office which was approximately ten feet from my desk. When he discovered that I had not brought my stenographic notebook he then flew into a rage, pounding his fist on the desk and shouted at me in harsh tones: "Haven't I told you to bring your notebook when I call for you! I don't want to have to tell you again." These may not be the exact words but are, in substance, what he said. He had told me previously that he wanted me to bring my notebook with me when he buzzed for me. However, many times when he called me it was not for dictation, and I would not know whether he wanted me for dictation or for other reasons. Upon this occasion if upset me so that I wept and I told him that he could get another secretary. I reported this incident to Mr. Reid and asked for another assignment.

The foregoing are the two occasions that I recall when he upset me most. There may have been other occasions when his manner may have upset me but I do not recall them at this time. They were minor incidents.

I found Mr. Green difficult to work with because of his harsh manner and disposition. He was the first person I worked under that I could not get along with.

When I first started to work in Mr. Green's office he asked me to sort and place in order certain personal papers which he had in his desk drawer. He asked me to do this when I was not engaged in my regular duties. The papers were in a middle drawer of his desk and it was approximately half-filled. As best I can recall, I worked spasmodically on this over a period of a month and a half. I cannot estimate the actual time spent in doing this job for Mr.

Green. These papers consisted of old receipts and personal business letters. The number of papers involved I cannot now estimate.

I did write a few personal letters for Mr. Green. I would say to the best of my recollection that I did not write more than a dozen letters. The exact number I do not recall.

IN WITNESS WHEREOF I hereby set my hand:

EDITH A. SMITH
Edith A. Smith

Subscribed and sworn to before me this 10th day of October, 1952.

FRANK E. COLE
Investigator

Exhibit 18

DISTRICT OF COLUMBIA, ss:

I, ALLAN C. TYLER, after having been duly sworn, state as follows:

I am Loan Manager for Federal National Mortgage Association. I first became acquainted with Mr. A. Lincoln Green early in the year 1950, which came about as the result of the necessity for consulting with the Legal Division from time to time in connection with loan administration work in instances where legal advice is needed. My contacts with Mr. Green relating to official matters were very infrequent. As a rule I would contact Robert N. Reid, General Counsel, and he in turn would, in most cases, assign the matter to one of the Attorneys in his division, and in some instances the assignment was made to Mr. Green. Generally, when Mr. Green came to my office to discuss a case I would refer him to the Examiner in my division who was handling it. However, on a few rare occasions I did discuss cases directly with Mr. Green.

On the rare occasions when I did discuss cases directly with him I experienced some difficulty since he appeared

inclined to vary from the legal aspects of the case and attempted to discuss administration phases. In my limited business dealings with him I experienced no rudeness or discourteousness from Mr. Green.

My remaining contacts with Mr. Green were limited to going to lunch with him and driving him home on a few occasions, during which matters of general interest were discussed, all of which were pleasant.

I have no direct knowledge of the charges brought against Mr. Green.

IN WITNESS WHEREOF, I have subscribed my hand this 28th day of October, 1952.

ALLAN C. TYLER
Allan C. Tyler

Subscribed and sworn to before me at Washington, D. C. this 28th day of October 1952.

FRANK E. COLE
Investigator

Exhibit 19

DISTRICT OF COLUMBIA, SS:

AFFIDAVIT

I, PHILIP J. SADOTI, having been duly sworn state as follows:

I am Classification Examiner located in the Personnel Branch of the Federal National Mortgage Association. As such, it is my duty to discuss the establishment of positions with various members of the Association as well as assist them in the preparation of position descriptions.

At one time I was required to assist the Office of the General Counsel in the preparation of job descriptions for Attorneys in Field Offices of the Association. During the course of this work, Mr. Green was given the duty of assisting in the preparation of these job descriptions. As a re-

sult Mr. Green had occasion to contact me two or three times for a half hour to an hour each time regarding the duties to be included in these descriptions. This took place, to the best of my recollection, approximately a year ago. My contacts with Mr. Green with respect to this matter extended over a period of one or two weeks. Mr. Green would seek my advice during these contacts. In my meetings, Mr. Green would accept the advice without dissenting comment. My limited contacts with Mr. Green were all conducted on a pleasant basis and there were no occasions of disagreement or outbursts of temper on anyone's part.

I have no direct knowledge of the charges brought against Mr. Green other than the personnel papers which I have reviewed.

In Witness Whereof, I have hereunto set my hand this 28th day of October 1952.

Philip J. Sadoti
Philip J. Sadoti

Subscribed and sworn to before me this 28th day of October, 1952.

Frank E. Cole
Investigator

June 24, 1952

STATEMENT OF MISS ELAINE CAHN:

About February 1951 I was assigned to work for Mr. Abraham L. Green, and both of us had desks in the same room. At that time there was not too much stenographic work required because Mr. Green was handling work with regard to Legislation. In that early period I did write some personal letters for Mr. Green, but not a great number.

Later on Mr. Green started to build a house and thereafter the major portion of my time was devoted to handling Mr. Green's personal work. During the period in which the house was being constructed I only wrote two or three memoranda a week for the Association and the balance of

my time was spent in doing work for Mr. Green, such as copying and writing up specifications for the house, writing letters to contractors and supply houses, letters in connection with bids, estimates, prices, etc. I made numerous telephone calls to supply houses and stores which sold building materials and equipment. I kept files for Mr. Green on bills, estimates, and a correspondence file. Mr. Green had his own letterheads but I used government paper for making copies and used government folders for the files maintained. I also kept Mr. Green's check book, prepared checks, kept records, and addressed envelopes for mailing. I would say that practically three-fourths of my time was devoted to personal work for Mr. Green. This went on for about six or seven months.

During this period in which the house was being constructed, Mr. Green took very long lunch hours apparently to attend to business in connection with his building, and sometimes went out in the afternoons for substantial periods of time and never said where he was going. I would say that during this period Mr. Green's lunch hours averaged at least two hours or more. A large part of this personal work was during the summer months last year while Congress was adjourned.

Later we moved across the hall into a room with Mr. Milton Gordon, and I continued to do personal work for Mr. Green, but not quite as much as I had done previously.

My work under Mr. Green was often very distasteful and unpleasant. He would frequently come into the office in a bad mood and speak very harshly to me. On two occasions, Mr. Green became so enraged that he threw a small telephone book toward me. It did not hit me, but did hit on my desk.

On one occasion I handed a letter to Mr. Green which I had typed and completed. Mr. Gordon, thinking I was finished, asked me to take some dictation. Mr. Green thereupon threw a fit and threw the letter on the floor and addressed Mr. Gordon by saying, "Don't you think you ought

to wait until I'm finished?" There was really no reason for such action. On numerous occasions Mr. Green lost his temper and spoke very harshly and abruptly to me, and on several occasions was very rude in his behavior. When he wanted to dictate, sometimes he asked me if I would please take some dictation but it wasn't unusual for him to knock on his desk and say "Take this!" or "Do this!" He used to upset me terribly in his rough and ungentlemanly way of speaking to me. He would call me sometimes, saying "You come over here and you come fast."

On numbers of occasions when I was doing stenographic work for the Association or writing up important work for Mr. Gordon, Mr. Green would deliberately interrupt me and say "Call so and so". These calls were personal calls to Mr. Green's architect or building supply house, etc. He would interrupt me to make such calls regardless of how important the work was which I was trying to do. Often Mr. Gordon told me that he didn't see how I could get my work out satisfactorily under such conditions. This sort of thing was very frequent and not just an occasional occurrence.

During the period I worked for Mr. Green he would on numerous occasions send me out to put a nickel in the parking meter where he had his car parked. This happened frequently for about two months. Sometimes the car was parked two or three blocks away from the building and would take time from the office to walk to the car and back. Also, on a few ocasions Mr. Green sent me on personal errands for him.

On one occasion he got upset and asked me to come sit down. He then proceeded to light into me because I wanted to go down and get a cup of coffee, although I had on occasions gone out for coffee especially on the mornings when I came in early. Mr. Green said he didn't want me to go downstairs—that he was my boss. In the course of the balling out he said he had gotten the opinion that I didn't want to do things for him, and yelled: "If you don't like the way things are done around here, you know what you can do!"

This experience upset me so that I cried, as I had not had anyone talk to me in this manner.

I recall another instance when Mr. Green asked me to get the White House Code number. I called information and she told me it was 190. I told Mr. Green it was 190 and he called the number and found out it was the Capitol. Mr. Green got hot and said: "G-D it to hell, when I ask you to do something, why can't you do it right?" I told him I gave him the number which the operator gave me and I was so hurt that I walked out of the room.

On one occasion I was in the room when Mr. Green and Mr. Gordon were discussing some legal problem. Finally Mr. Green got mad and called Mr. Gordon an imbecile. Whereupon Mr. Gordon said: "If I can't ask you a sane question and get a sane answer, you're nuts."

Mr. Green was so rude and ugly and his method of dealing with me was so humiliating and upset me so much, and he became so obnoxious that I finally said I just couldn't take it any longer and I would quit unless transferred so I'd not have to work for Mr. Green.

(Signed) ELAINE CAHN

A certified true copy:
P. J. SADOTI
Acting for Harrison E. Meyer, Personnel Officer

Exhibit 17

September 15, 1952

To: Raymond M. Foley, Chairman of the Board, FNMA
From: J. S. Baughman, President, FNMA
Subject: Statement of Charges Against A. Lincoln Green, Attorney-Advisor (GS-13), FNMA

With reference to the above, the following constitutes my analysis of the evidence, my findings, and my recommendation. I am forwarding a copy of the statement of charges, and also the originals or copies of all the documents and evidence submitted to me in substantiation of and in defense

against the charges, together with certain other related memoranda or letters, etc. A list of such documents and evidence is as follows:

1. Copy of Statement of Charges dated July 14, 1952.
2. Original Statement of Milton Gordon in support thereof dated June 25, 1952.
3. Original Statement of Mrs. Edith A. Smith in support thereof dated June 24, 1952.
4. Original Statement of Thomas F. Wilson in support thereof dated June 30, 1952.
5. Original Statement of Miss Elaine Cahn in support thereof dated June 24, 1952.
6. Original Statement of Robert Newton Reid in support thereof dated July 11, 1952.
7. Copy of Memorandum from R. N. Reid to A. Lincoln Green dated July 15, 1952.
8. Original Letter from A. Lincoln Green to J. S. Baughman dated July 23, 1952.
9. Copy of Letter from R. N. Reid to A. Lincoln Green dated July 25, 1952.
10. Copy of Letter from J. S. Baughman to A. Lincoln Green dated July 29, 1952.
11. Original Letter from A. Lincoln Green to J. S. Baughman dated July 30, 1952.
12. Copy of Letter from J. S. Baughman to A. Lincoln Green dated July 30, 1952.
13. Copy of Letter from J. S. Baughman to A. Lincoln Green dated September 10, 1952. (Giving extension of time.)
14. Original Answer of Mr. Green, with jurat dated September 9, 1952.
15. Miscellaneous Records of Mr. Green submitted with his answer. Returned to Green.
16. Copy of proposed letter to be sent by J. S. Baughman to A. Lincoln Green advising him of adverse action of dismissal. Rough draft.

Before the evidence as to each individual charge is considered, there are some general comments I desire to make that are applicable to all charges and to the defense. To the extent feasible, I will refrain from similar comments in my later analysis of each individual charge.

Under date of July 30, 1952, at Mr. Green's request, I extended his time to answer from the close of business on July 31, 1952 to the close of business on September 9, 1952, and also extended the proposed effective date of the proposed adverse action from August 15, 1952, to September 15, 1952. On September 9, 1952, at the close of business, Mr. Green filed his answer, which consists of some 59 pages together with certain exhibits mentioned therein. Because full consideration of Mr. Green's answer and defense together with the evidence in support of the Charges would entail a very considerable volume of work, I did not think that I could make a thorough analysis and recommendation, and that you also could review the evidence and come to a decision, by September 15, 1952, which was the proposed effective date of the proposed adverse action. I therefore again extended the proposed effective date of the proposed adverse action, this time from September 15, 1952, to September 19, 1952, at the close of business.

I have concluded from my study that a considerable portion of Mr. Green's answer has no bearing on the Charges against him. As a consequence it became necessary to sift his answer carefully, and to extract those parts that were relevant as a defense to the Statement of Charges. For example, Mr. Green devotes much of the argument in his answer to a general vilification of the FNMA General Counsel, of "the drafter of the Statement of Charges," and of all other lawyers in the Office of the General Counsel; his answer is replete with accusations alleging the "ignorance" of members of the FNMA legal staff, their "incompetence," their "mental confusion," and their "low standard of performance."

Such accusations, even if true (which they are not), would not constitute a defense to the pending charges against Mr.

Green. Any faults or weaknesses which the members of the legal staff might have had would not have provided an acceptable excuse for Mr. Green to be discourteous and insulting to his fellow attorneys and to the stenographers assigned to him. Nor could such allegations possibly be a defense to the charge of improper use of Government personnel and property, or to absences without leave, or to displays of disrespect and resentment toward his superiors. Such accusations may have been made for the sole purpose of diverting attention from the real issues in this case. Although I shall not dignify them by further discussion, I cannot permit the matter to be passed by without recording that such accusations are simply not true. They are entirely unwarranted. My associations with the General Counsel, Mr. Reid, and with other members of his staff, have indeed been close during the past two years. I consider all of them to be capable, honest, and trustworthy. If there have been any delays in the past, the reason is that some of the positions in the Office of the General Counsel have not been filled.

Moreover, Mr. Green, in his answer, several times accuses "the drafter of the Statement of Charges" and also the General Counsel of wilfully inserting false statements in the Statement of Charges knowing them to be false. I know that such accusations are completely untrue. The Charges were carefully drawn *after* the statements of the various witnesses were reduced to writing, and the Charges were based entirely on the statements of the witnesses.

The record discloses that Mr. Green has been granted all the time he has requested to prepare and present his answer and defense. I have been as indulgent with all of his requests as I could be, consistent with my obligation to be fair likewise to the interests of the Association. After the answer in this matter had been filed, in considering the evidence in support of the Statement of Charges, I not only carefully reviewed the written statements of the witnesses, but I also orally interviewed the witnesses themselves. Mr.

Green has vigorously accused the General Counsel and his assistants of exercising coercion and duress over Miss Elaine Cahn, particularly, and, by implication at least, over the other witnesses as well. I talked to each witness separately and alone to determine whether the statements they had given were true and whether any promise of reward or punishment, express or implied, had been made. I am entirely satisfied that no duress or coercion was employed. I am likewise satisfied beyond doubt that the statements were voluntarily made, and that they are truthful and reliable.

There is one more point to be noted before the individual charges are considered. In Mr. Green's letter of July 23, 1952, he requested, among other things, that he be given a Bill of Particulars to apprise him of the facts in order that he would be able to defend himself. This request was denied in my letter to him dated July 29, 1952. It is observed that Mr. Green, in his answer, has been able to identify each specific incident referred to in the Statement of Charges, so that he has been amply able to defend himself. The denial of his previous request was undeniably proper.

I have carefully reviewed all of the evidence presented in support of the Statement of Charges, and also the answer and affidavits and other evidence filed by Mr. Green as a defense to the Statement of Charges. The following resume and analysis thereof, together with my findings and my recommendation, are presented for your consideration and decision.

CHARGE I. IMPROPER CONDUCT TOWARD OFFICE PERSONNEL

(a) It is charged that Mr. Green used improper conduct toward office personnel, covering two stenographers during two different periods. The first period was from November 1950 to February 1951, and the stenographer was Mrs. Edith A. Smith. It will be seen from Mrs. Smith's unsigned statement that he used severe language toward her about answering the telephone for the other lawyer who at that

time shared the office with Mr. Green. Mr. Green's attitude or conduct would appear to be improper on two counts. The secretary was correct in saying "Mr. Coolidge's office" when she answered the telephone, and, further, there was no need for severeness. However, the more serious offense occurred in February 1952 when Mrs. Smith went into Mr. Green's office at his call without her notebook; he had sometime previously instructed her to bring her notebook when he called. While she may have been violating his instructions, it is inconceivable that with their desks only ten feet apart such a slight infraction would warrant a "bawling out" of such force that would cause her to cry and threaten to resign from her position with the Government unless given another assignment. She says that she had never had anyone talk to her like that before. She describes his attitude toward her as discourteous and rude. There was no occasion for such conduct, and Mr. Green was advised at the time by the General Counsel that such conduct toward office personnel would not be tolerated and must not be repeated. Mr. Green agreed there would be no repetition.

In answering this Charge, Mr. Green claims in effect that the different wording in the affidavit he later secured from Mrs. Smith entirely vindicated him of this Charge. I do not concur. Whatever differences there may be in the language contained in the two documents, the fact remains that the words Mr. Green actually used in admonishing Mrs. Smith caused her to ask for a reassignment. After Mr. Green had filed his answer, I talked to Mrs. Smith, and she stated explicitly that all facts related in her original unsigned statement were true. Further, Mr. Reid, in his statement, corroborates the truth of Mrs. Smith's original statement in that he says Mrs. Smith on that day reported to him the same facts at the time of the request for reassignment. Mr. Reid's statement also discloses that Mrs. Smith did not sign her statement after it was prepared because she preferred not to become "involved in any trouble." Mr. Green remembers the incident of the reprimand (page 4), but merely minimizes his own misconduct.

I believe that the charge that Mr. Green's conduct toward Mrs. Smith was improper, and that he was warned by the General Counsel such conduct toward office personnel would not be tolerated and that Mr. Green agreed there would be no repetition thereof, is established by the evidence.

(b) But the evidence shows there were instances of improper conduct toward the second stenographer assigned to Mr. Green, notwithstanding the previous warning. These occurred during the period from February 1951 to June 1952, and the stenographer was Miss Elaine Cahn. She says that her work for Mr. Green was often very distasteful and unpleasant, that he was often in a bad mood and would speak harshly to her, often becoming enraged, and that twice he threw a small telephone book toward her that hit her desk. She further describes his conduct as rude, ugly, and obnoxious.

To illustrate Mr. Green's treatment of this stenographer and the ungentlemanly way he spoke to her, she cites several instances. She says it wasn't unusual for him to knock on his desk and say "Take this" or "Do that." At other times, "You come over here and you come fast." And once she says he yelled at her "If you don't like the way things are done around here, you know what you can do." At another time in a rage he said, "God damn it to hell, when I ask you to do something why can't you do it right?" At another time she says Mr. Green called Mr. Gordon, the attorney who shared his office space at the time, an "imbecile" in some discussion they were having of a legal problem.

Miss Cahn stated that Mr. Green's conduct and attitude toward her were so humiliating and obnoxious, and upset her so much, that she finally could not endure it any longer. She told the General Counsel she would resign unless given another assignment. She was given a different assignment.

Miss Cahn's statement concerning Mr. Green's conduct and attitude toward his fellow lawyers in the office is abundantly corroborated by other witnesses. Mr. Wilson, the

former Assistant General Counsel, describes him as a difficult man to reason with, uncongenial and uncooperative, extremely arrogant, and critical of his fellow associates. Mr. Milton Gordon, who shared office space with Mr. Green for nearly six months, stated that Mr. Green was intolerant of the views of one who disagreed with him, calling him "ignoramus." Mr. Gordon substantiates Miss Cahn's statement of Mr. Green's treatment of her by saying Mr. Green was discourteous and at times quite inconsiderate. Mr. Gordon found her very upset on several occasions, which she stated was due to Mr. Green's treatment of her. Mr. Gordon counselled against her threat to resign at one time. Finally Mr. Gordon advised the General Counsel that he could do better work himself if he was not obliged to work in the same room with Mr. Green. Mr. Gordon was subsequently moved. The General Counsel, Mr. Reid, states that Mr. Green is argumentative and opinionated in his views, and is not amenable to suggestion.

Mr. Green has made amazing statements in attempting to deny the charge of improper conduct toward Miss Elaine Cahn. He describes her in uncomplimentary terms—the "opposite of a shrinking violet, . . . strong, domineering will, . . . difficult to tell her anything, . . . smoking cigarettes while taking dictation, . . . no gratitude, . . . her conduct unbearable, . . . frequently absent" (pages 9, 10, 11, 12). On page 16 he accuses her of being "an interested witness." On page 6 he states that she came under the direct authority of the General Counsel and "ars willing assistant," and that "a signed statement was extracted from her." Again, on page 22 he accuses her of using language similar to the profane language which he himself is charged with using toward her. Mr. Green undertakes to pit Miss Cahn's parents against her, making it a matter of record (page 18) that the father said she had done a number of things the parents did not like and that she would not listen to them at all, and that "I had her a week in this store and I was glad she left." While Mr. Green denies this charge, his denials in my opinion are considerably weakened by his

admissions. On page 20 he states he "may have been short and abrupt with her on occasions" and that her conduct "displeased him." He remembers the incident of the papers "falling" to the floor (pages 20, 21). He remembers about the time of the wrong telephone number (pages 12, 13). He recalled also the incident about the telephone book (page 8).

Mr. Green bases his defense against this charge upon the ground that it is his word against the "bare accusations of a girl of 19, especially in the absence of complaint made at the time when the alleged misconduct occurred" (page 22). It is my opinion that Mr. Green's conduct was progressive and cumulative in nature, and that when the limit of Miss Cahn's endurance was reached she did complain. Action was immediately thereafter taken to effect her reassignment to another job, and the Statement of Charges was filed against Mr. Green. Also, Miss Cahn's statements are corroborated by three other reliable witnesses, the General Counsel, Mr. Reid, the former Assistant General Counsel, Mr. Wilson, and more particularly by Mr. Milton Gordon. Mr. Gordon had shared the same office space with Mr. Green and Miss Cahn, and was in a position to know the actual facts with respect to Mr. Green's conduct and actions.

The evidence establishes the correctness of this charge against Mr. Green. The two affidavits submitted by Mr. Green, one by Frances C. Drwal, his former secretary in RFC, the other by Charlotte Ryan, a former RFC office associate (Exhibits B and C to Mr. Green's answer), do not tend to disprove the charge since the affidavits cover a period long before the time in question.

CHARGE II. IMPROPER USE OF GOVERNMENT OFFICE AND PROPERTY.

(a) This charges Mr. Green with the improper use of Government property during the period the first stenographer, Mrs. Edith A. Smith, was assigned to assist him.

She states that several times during the short period of her assignment, Mr. Green asked her to write personal letters for him and to sort various personal papers and bills. I believe that Government property was used in the performance of these services.

(b) This part of the charge covers the period from February 1951 to June 1952 when Miss Cahn was assigned to Mr. Green. It was during this period from the summer or fall of 1951 to the spring of 1952, that Mr. Green was having his house constructed. Miss Cahn states that during this period she was called upon to perform the services for Mr. Green's personal benefit, as set out more particularly in Charge III and hereinafter more fully considered. In performing those services for Mr. Green, she used various and sundry items and supplies belonging to the Government, such as the telephone, typewriters, file folders, stationery and filing cabinets; and other supplies and equipment. Such use of Government property, which constituted a financial gain to the employee and a corresponding loss to the Government, was improper.

Since this charge is closely related to Charge III, I will discuss the evidence presented by Mr. Green under Charge III as he himself has done in his answer.

"CHARGE III. IMPROPER USE OF GOVERNMENT PERSONNEL

(a) This is a charge against Mr. Green of improperly using the services of Government stenographers that were assigned to assist him. Several times he required his first stenographer, Mrs. Smith, to do his personal work, such as writing letters and sorting papers and bills, during the short period she was assigned to him.

(b) The extent to which Mr. Green was willing to use the services of a Government employee for his own benefit is disclosed in the statement of Miss Cahn. Particularly during the time his house was under construction, he utilized her services for his personal business to the extent, as she says, "I would say that practically three-fourths of my time

was devoted to personal work for Mr. Green. This went on for about six or seven months."

The services that Miss Cahn was called upon to render to Mr. Green are set out in the Statement of Charges, but to name a few, they consisted of making numerous telephone calls to various individuals, the writing of letters, including letters concerning estimates and bids, the establishment and maintenance of correspondence files and bids and estimates files, and the preparation and maintenance of his personal checks and check records. Mr. Green also sent Miss Cahn out of the building on his personal errands, including errands to put coins in the parking meters where his car was parked on the street.

Mr. Gordon verifies the telephone calls and certain of the bookkeeping duties that Miss Cahn was required to do for Mr. Green. And Mr. Green did not confine his use of Miss Cahn to those periods when she was not busy. The evidence shows that Mr. Green would sometimes interrupt official work she was doing and, as she says, "On numerous occasions when I was doing stenographic work for the Association or writing up important work for Mr. Gordon, Mr. Green would deliberately interrupt me and say 'Call so and so.' These calls were personal calls to Mr. Green's architect or building supply house, etc. He would interrupt me to make such calls regardless of how important the work was which I was trying to do. Often Mr. Gordon told me that he didn't see how I could get my work out satisfactorily under such conditions. This sort of thing was very frequent and not just an occasional occurrence."

Mr. Gordon also verifies the improper use of Miss Cahn's services, the extent thereof, and its improper interference with Government work. He says at one point, "This information was given me by Miss Cahn to explain why she was delayed in getting out my work for the office; it appears that these personal items which Miss Cahn handled for Mr. Green took a good portion of her time."

Mr. Green's answer to this charge follows the general pattern of complete denial of the charge, and then an admission—to some extent at least—of its truth (for example, see pages 32, 33, and 34). His defense to this charge could, in my opinion, be stated thus:

I did use Government property and personnel improperly, but I am guilty of nothing—

(1) Because I was given no warning not to do so;

(2) Because I did it openly;

(3) Because I did not do it to the extent charged.

These "defenses" of Mr. Green will be considered in the order given.

(1) No Warning. There is no evidence that Mr. Green's superiors were aware of the substantial extent of the use of the Government stenographer and Government property by Mr. Green for his private purposes. By innuendo and implication Mr. Green endeavors to establish that his superiors did have such knowledge. The General Counsel, Mr. Reid, in his statement says that he had heard rumors to the effect that Mr. Green was using office facilities for his personal business to some extent. But he assumed they were minor and in no manner interfered with the work of the office or of the staff. For that reason, coupled with the fact he was busy on other official matters, he made no investigation at that time. But, when Miss Cahn threatened to resign and at the same time disclosed the details of Mr. Green's conduct, Mr. Reid did order an immediate investigation. The situation that was discovered, to use his words, was "shockingly bad." Thus the evidence shows that no warning could be given Mr. Green to stop his improper practices because those practices were not known to his appropriate superiors. Knowledge on the part of Miss Cahn and Mr. Gordon certainly could not be imputed to the General Counsel. Office employees ordinarily do not run to their superiors and complain about an

associate's conduct. But whatever Miss Cahn and Mr. Gordon should have done, the fact remains that the General Counsel, Mr. Reid, did not know of the extent of Mr. Green's misconduct, and no warning was possible. It is also my opinion that Mr. Green was not entitled to a preliminary warning that he must cease the improper use of Government property and Government personnel. He is a mature lawyer of Grade GS-13 with many years in Government service, and he should have known such practices were improper without being told. In my opinion, the practices in question would have been no less improper in private business than they were in the Government service. His mention that he had been doing these things for years and had never before been warned does not assist him, in my view.

(2) He Did It Openly. As just set forth in (1), the fact that Mr. Green might have effected his misconduct openly does not establish that his superiors knew the extent of the misconduct. Even if his superiors had known exactly what Mr. Green was doing and had explicitly told him to carry on (which, of course, was not the case), Mr. Green's offense would have been just as serious. True, in such hypothetical circumstances his superiors might be equally guilty with Mr. Green, but that would not excuse Mr. Green. I am of the opinion that no Government officer or employee has the right or authority to permit another to misuse Government property or personnel.

(3) Not To The Extent Charged. It is not necessary to determine in this case whether the use of Government property and personnel was limited to the degree admitted by Mr. Green, or whether the other witnesses were telling the truth. It is my opinion that the use of the stenographers and other office facilities for personal and private purposes, if only to the extent Mr. Green has admitted, is sufficient to require a holding that such use constituted serious misconduct. But I am of the opinion that Mr. Green actually used the facilities and stenographers far more frequently than he has admitted. Miss

Cahn and Mr. Gordon, who were in the same room with Mr. Green, certainly knew the facts, and I believe they were telling the truth. The evidence shows beyond doubt that Mr. Green utilized Miss Cahn's services during the period his house was under construction, on his personal affairs, for a very substantial portion of her time. The truth of Charges II and III is clearly established by the evidence. I also find that there is no truth whatsoever in Mr. Green's statement (page 38) that the pressing of this charge "is an evil act by evil men intent on evil design." On the contrary, the charge has been overwhelmingly sustained by all the creditable evidence that was presented.

CHARGE IV. IMPROPER ABSENCES FROM OFFICE.

This is a charge against Mr. Green for improperly absenting himself from the office without leave during business hours and particularly during the period of six months or more while his house was under construction. The extent of such absences was stated by Miss Cahn, who was in a position to know. She says, "During this period in which the house was being constructed, Mr. Green took very long lunch hours, apparently to attend to business in connection with his building, and sometimes went out in the afternoons for substantial periods of time and never said where he was going. I would say that during this period Mr. Green's lunch hours averaged at least two hours or more. A large part of this personal work was during the summer months last year while Congress was adjourned."

While Miss Cahn is the only one who states precisely that Mr. Green's unauthorized absences aggregated two or more hours daily, her statement of abnormal absences is corroborated by two others. Mr. Gordon stated, "During the time I shared this office with Mr. Green, I observed that he absented himself from the office quite frequently; he would either take a long lunch hour or would leave prior to closing time; on a few occasions he mentioned that he

was obliged to leave the office to handle his personal matters." And Mr. Wilson said that Mr. Green "was very indulgent about leaving the office during business hours."

While admitting that he took extra time away from the office—during lunch periods at least (page 42(a))—Mr. Green again denies that his actions constituted any offense. In defense he says, first, that he wasn't busy. Even if true, that fact would not justify absence without leave.

Next, he says that attorneys do not work by the clock (page 42). Mr. Green then points out that on both Saturday and Sunday, June 16 and 17, 1951, he worked overtime, which he states the record will prove. I accept Mr. Green's statement about this overtime work, but I am of the opinion that this single instance of overtime more than a year ago does not constitute a defense to the charge.

In his answer to this Charge Mr. Green stresses that he had insufficient work to do. I have previously noted my opinion that this would not entitle him to absent himself without leave. Mr. Green adds a wholly immaterial allegation that the FNMA Agency Offices in the field were overstaffed with lawyers at the begining of 1952. While Mr. Green's allegation has no conceivable bearing on this Charge of absence without leave, I desire to point out that Mr. Green is mistaken in what he says. First, Mr. Green has never been in a position to know the facts. Secondly, the Agency Legal Branches were definitely understaffed at the beginning of 1952, and almost all of them were working many hours overtime each week. Lastly, at that time the legal staffs in the field were in the process of completing new staffing organizations to enable them to assume the legal work formerly handled by outside "fee counsel"; the purpose of this change, which was to effect economies in operation, was accomplished, but the added personnel proved to be inadequate for the substantial volume of such added legal work.

Mr. Green alleges (page 59) in effect that he is not to be blamed for absences without leave because his superiors knew of such absences. This allegation is not supported by the evidence. Even had his superiors known, they would have been without authority to grant permission to leave the office without the proper charging of such absences on leave slips provided for that purpose.

I believe the evidence presented in this case fully establishes the correctness of this Charge.

CHARGE V. REFUSAL TO RESPECT AUTHORITY OF SUPERIORS.

While this charges Mr. Green with refusal to respect the authority of his superiors, one of the specific occasions cited in the charge is practically equivalent to insubordination. In one case involving the preparation of a legal instrument, Mr. Green was unwilling to make the change suggested by his superior, an Assistant General Counsel, and had to be ordered to make such change. The other occasion, involving a letter which he had not written to the satisfaction of the Assistant General Counsel, amounted virtually to insubordination. Mr. Green told his superior in blunt terms to change it himself or get some one else to do so if he was dissatisfied. These two cited instances of lack of respect for superiors are illustrative of Mr. Green's uncongenial and uncooperative conduct toward others in the office.

Mr. Green admits in his answer—to a certain extent at least—that he might have shown resentment to his superiors, and that he was argumentative (page 45), and he remembers the two incidents set out in the Charge (pages 54, 55), but he attempts to excuse his conduct on the ground that it was the "daily give and take with his colleagues" (page 59). He also makes a number of allegations which appear not to be relevant. He seems to endeavor to substantiate his defense to the charge by contrasting his own supposed superior knowledge as a lawyer to the alleged incompetence of his colleagues. How that, if true, would excuse his being disrespectful of the authority of his superiors is not clear.

Mr. Green cites examples which he says "show ignorance of elementary principles of law, lack of thorough training, lack of ethical standards, and falsification" (page 46) on the part of his associates. I do not propose to prolong this analysis by attempting to determine whether Mr. Green was right or wrong in his examples, which I consider to be irrelevant. I express no opinion on the matter.

I am of the opinion, however, that the attack upon the mental capacity and ability and honesty of all members of the Office of the General Counsel constitutes additional evidence that Mr. Green is resentful of the authority of his superiors.

In conclusion, on this Charge, it is to be noted that Mr. Green states that his own argumentative attitude and dislike of changing his legal opinions were based on "his own professional reputation to maintain" (page 45). Yet, when other lawyers disagreed with him in the examples he sets out beginning on page 46, such disagreement demonstrates "ignorance of elementary principles of law, lack of training in handling legal problems, and easy willingness to falsify the record" (page 55).

Mr. Green's attempt to show some sort of a nefarious scheme to effect his dismissal from the General Counsel's Office is, in my opinion, unworthy of discussion. The evidence that has been adduced establishes the truth of every Charge set out in the Statement of Charges, and I so find.

Findings.

Under all of the facts and circumstances of the case as shown by the evidence, I find that the charges against Mr. Green have been sustained, and that his discharge will be for such cause as will promote the efficiency of the service, as provided in Section 14 of the Veterans' Preference Act of 1944, as amended. Although the evidence does not disclose that Mr. Green was warned not to perform the actions with which he is charged, with the exception of his improper conduct toward office personnel, I find that in the

circumstances there is nothing that requires or would entitle him to any advance warning.

RECOMMENDATIONS:

Based on my findings, I recommend that Mr. A. Lincoln Green be discharged in accordance with the proposed adverse action as set out in the Statement of Charges dated July 14, 1952, and that a letter of notification be sent Mr. Green substantially in the form of the attached.

(Signed) J. S. BAUGHMAN, *President,*
Federal National Mortgage Association.

APPROVED:

(Signed) RAYMOND M. FOLEY,
Chairman of the Board,
Federal National Mortgage Association

A CERTIFIED TRUE COPY:
P. J. SADOTI,
Acting for Harrison E. Meyer,
Personnel Officer

Letter from Blann to Green, July 29, 1954

Returned
BAR:JGC:hbw
July 29, 1954.

Mr. A. Lincoln Green
1305 Key Drive
Alexandria, Virginia

Dear Mr. Green:

Reference is made to your appeal, under Section 14 of the Veterans' Preference Act of 1944, from the decision of the Board of Appeals and Review dated February 3, 1954, holding that the action of the Federal National Mortgage

Association in removing you from the position of Attorney, GS-13, was justified on the basis of Charges 1, 2, and 3, in letter of charges dated July 14, 1952.

The Commissioners have carefully considered this case to determine whether or not there is reason to warrant granting you a hearing, or reason to reopen your case under Civil Service Regulations 22.11(g). As a result of this review it is apparent that the facts of record are sufficient and hence your request for a hearing is denied. Further, no basis is found which would justify the reopening of your appeal.

In arriving at this conclusion the Commission was aware of the recent decision of *Williams* v. *Cravens*, U. S. Court of Appeals, District of Columbia Circuit, decided February 25, 1954, in which the Court pointed out that the procedural exactness required in cases that are possibly criminal in character is different and more stringent from that in other types of cases. The Court stated that the *Williams* v. *Cravens* case was to be distinguished from the *Money* v. *Anderson*, *Manning* v. *Stevens*, and *Beake* v. *Pace* cases. The *Williams* v. *Cravens case* is not criminal in character but relates to deficiencies in the employee's work performance rather than immoral conduct (*Money* v. *Anderson*) or homosexuality (*Manning* v. *Stevens*).

It is further apparent that the final decision letter of the Federal National Mortgage Association dated September 19, 1952, does not conflict with the recent decision of the Court in the *Mulligan* v. *Andrews* case which you cited. The decision letter of the Federal National Mortgage Association specifically refers back to the charges preferred in agency letter dated July 14, 1952, as the basis for removal. It is therefore apparent that the decision of the Board of Appeals and Review was proper on the basis of the facts presented.

Since the above decision was reached by the Commissioners prior to the receipt of your request for withdrawal

of your further appeal, your request for withdrawal is denied.

By direction of the Commission:

Sincerely yours,

JOHN F. BLANN, *Chairman,*
Board of Appeals and Review.

cc: MR. HARRISON MEYER
Personnel Officer,
Housing and Home Finance Agency
811 Vermont Avenue, N. W.
Washington 25, D. C.

cc: MR. MURDAUGH S. MADDEN
Attorney at Law
1000 Hill Building
839 Seventeenth Street, N. W.
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cc: APPEALS EXAMINING OFFICE
cc: SERVICE RECORD DIVISION
DOB not shown

Office Services Division, Mails & Files Section, July 29, 1954. Mailed by B

July 11, 1952.

STATEMENT

My name is Robert Newton Reid. I am Vice President and General Counsel, Federal National Mortgage Association. As such, I am responsible for the staff of FNMA lawyers, one of whom is A. Lincoln Green.

Although I had heard on more than one occasion prior to the present month that Mr. Green had used FNMA office facilities to accomplish his own personal objectives in connection with the construction of his new house, I assumed that any such breach of conduct was minor and in no way interfered with the office work or staff. Accordingly, and because of the pressure of business, I did not

then personally inquire into the rumors nor did I instruct other personnel to do so, although I believe I did have a discussion with Mr. Thomas F. Wilson, then Assistant General Counsel (who was Mr. Green's immediate superior), to the effect that professional staff members—lawyers—should be deemed to be responsible for limiting their outside activities so that such activities would never constitute an abuse of office privileges. However, after Miss Elaine Cahn, Mr. Green's most recent stenographer, had reported to me her intention to resign—unless she could be given an assignment to work for someone other than Mr. Green, I decided that an inquiry of Mr. Green's conduct should be made. The inquiry developed facts and information showing that the situation was shockingly bad.

At the outset I should say that Mr. Green has had no preliminary warning other than with respect to his conduct toward office personnel. When Mrs. Edith Smith, Mr. Green's previous stenographer, told me of Mr. Green's severe conduct toward her consisting of unwarranted tongue lashings, and that she was going to resign unless given another assignment away from Mr. Green, I called him into my office. I told him in substance that such conduct would not be tolerated in the Office of the General Counsel and cautioned him against any future recurrence. He indicated that he would conduct himself in such a way that there would be no future difficulties. Subsequent developments proved otherwise.

As to his other conduct disclosed by the investigation, it is my opinion that a preliminary warning would have been inappropriate for a man of Mr. Green's age, maturity, and background. A lawyer in his grade and position on the staff of the General Counsel must be held to know, without being told specifically, that he cannot use Government property and the services of Government personnel for the transaction of his own private and personal business. In my recent talk with him on July 7, 1952 he did not hesitate to admit using the office telephone a minimum of 100 times to make telephone calls on his personal business during the

period in which his house was under construction; it was my impression from the manner of his statement that he contemplated there were many more than 100 outgoing calls. As a person in official Government employment, he must know also that he cannot absent himself from the office habitually at any time he pleases without permission and without accounting for such absences by proper explanation or charging such absences against appropriate leave.

By reason of reports made to me from time to time by Mr. Thomas F. Wilson, the then Assistant General Counsel, I have not been unaware of Mr. Green's resentment of the authority of his superiors. In general, I felt that this matter was one of the problems and responsibilities of the Assistant General Counsel. Mr. Wilson reported to me that he had been compelled on at least one occasion to order Mr. Green to make certain changes in a legal document that was in process of preparation. He also reported to me, in the case of a letter drafted by Mr. Green, that Mr. Green had stated if he (Mr. Wilson) didn't like the way the letter had been written by him (Mr. Green), he (Mr. Wilson) could change it himself or get someone else to do so. Such actions border on insubordination, if, in fact, they do not constitute insubordination; and they cannot be countenanced if effective work is to be discharged by the OGC.

I have always found the reports of Mr. Wilson to be accurate and unbiased, and I have the fullest confidence in the statements he has made to me. His reports were never inconsistent with my observations of Mr. Green's general pattern of behavior. I feel that Mr. Green characteristically is not amenable to suggestions, and is opinionated in his views to such a degree that it is seldom practicable to try to get him to see or recognize the desirability of a different approach to a problem or to adopt a viewpoint different from his own. I have personally made such efforts on several occasions, but the time consumed in the resulting discussions and arguments led me to the reluctant

conclusion that other demands on the time of the General Counsel and of the Assistant General Counsel required that assignments be made to members of the staff other than Mr. Green.

It is my understanding that a statement of Mrs. Edith Smith in this matter was prepared from notes taken by Mr. James K. Coolidge who discussed with her the general subject of her work with Mr. Green. I am informed that subsequently she declined to sign the statement, saying that she preferred not to become "involved in any trouble." I have read her statement and the facts set out therein are in accord with oral statements which Mrs. Edith Smith made to me at the time of the incidents referred to in her statement.

A loss of efficiency and morale in the office has resulted from Mr. Green's conduct and attitude. His conduct and behavior have been contrary to recognized standards of propriety. I have reluctantly concluded that if his employment were to be continued there would be an additional adverse effect on the efficiency and morale of the organization. Accordingly, I must state my belief to be that his removal will be in the best interests of the Association.

A CERTIFIED TRUE COPY:
P. J. SADOTI,
Acting for Harrison E. Meyer;
Personnel Officer

(Signed) ROBERT NEWTON REID
Robert Newton Reid

June 25, 1952

STATEMENT OF MR. MILTON GORDON

In January 1952, Mr. A. Lincoln Green and Miss Elaine Cahn were moved into Room No. 857 which I had previously occupied alone. Miss Cahn was to act as Secretary for both Mr. Green and myself. I remained in this office, sharing it with Mr. Green and Miss Cahn until June 1952, when I was moved to Room No. 861. The following observations cover the period from January to June 1952:

From telephone conversations I could not help overhearing—as Mr. Green's desk was only a few feet away from mine and he speaks in a very loud tone of voice—I learned that Mr. Green was then engaged in constructing his home. Miss Cahn answered all of his telephone calls, which included the business as to his home, and likewise was asked by Mr. Green to make telephone calls for him in connection with this personal business. Miss Cahn advised me that she was keeping Mr. Green's personal books and files, including his check books and other records, and typing his business letters. This information was given to me by Miss Cahn to explain why she was delayed in getting out my work for the office; it appears that these personal items which Miss Cahn handled for Mr. Green took a good portion of her time.

During the time I shared this office with Mr. Green, I observed that he absented himself from the office quite frequently; he would either take a long lunch hour or would leave prior to closing time; on a few occasions he mentioned that he was obliged to leave the office to handle his personal matters.

Mr. Green's attitude toward Miss Cahn was discourteous and, at times, quite inconsiderate. On several occasions I found Miss Cahn in a very upset state of mind which she stated was due to the treatment she had received from Mr. Green. At one time, she threatened to resign but I re-

strained her from doing so, hoping that conditions would change for the better.

As to my relationship with Mr. Green, I found that it was difficult to discuss a legal problem with him in view of the fact that he was intolerant of any views that did not agree with his own. Anyone who didn't see things his way, including myself, was an "ignoramus". As a result, I had very little to say to him and advised Col Reid that I thought I could do a better job for the office if I was not obliged to work in the same room with him.

(Signed) MILTON GORDON

A CERTIFIED TRUE COPY:
P. J. SADOSKI,
Acting for Harrison E. Meyer,
Personnel Officer

June 24, 1952.

STATEMENT OF MRS. EDITH A. SMITH

I came to work for FNMA in November 1950 and was assigned to Mr. A. Lincoln Green. My desk was in the same room with Mr. Green and Mr. James K. Coolidge.

Shortly after starting to work I answered the phone one day on Mr. Coolidge's desk when he was out of the office. This seemed to upset Mr. Green and he was very severe in telling me that I was working for him. He said that I should tell everyone who called that it was Mr. Green's office, even if the call came over Mr. Coolidge's number.

I worked for Mr. Green until around February of 1951. Several times he asked me to work on his personal matters in the office, including the writing of letters for him and sorting various papers and bills.

I can describe Mr. Green's attitude toward me only by saying he was nasty, discourteous and rude. Several times I told Miss Ellen Kernaghan and Mary Lou Smith that

I would not stand such treatment and was going to quit unless I was given another assignment.

Our office was changed in early 1951 to Room 861 where Mr. Green had a smaller, private office. My desk was just outside his door. One day he called me and I went into his room without my notebook. He had previously told me to always bring my book as he might want to dictate. When he noticed I didn't have my notebook he became enraged and proceeded to bawl me out terribly although our desks were only ten feet apart. I had never had anyone talk to me like that before. I came out of his office crying and determined to quit. But I was given another assignment immediately and was willing to continue to work for the Association. I did stay but I would have quit that day if I'd have been asked to continue working for Mr. Green.

A CERTIFIED TRUE COPY:
P. J. SADOTI,
Acting for Harrison E. Meyer.
Personnel Officer

STATEMENT OF THOMAS F. WILSON

I was appointed Assistant General Counsel of Federal National Mortgage Association around April 1, 1951. At that time A. Lincoln Green was on the staff of Frank Kelly. About July or August of 1951 Mr. Green was put on my staff. He remained there until I left the Association in April of 1952.

I cannot recommend Mr. Green for a satisfactory rating. He never completed his work assignments in a manner that either pleased me or that I felt would be passed by the General Counsel, as a consequence of which I would complete a good part of his work myself. He is a difficult man to deal or reason with. On occasions he can be most uncongenial and uncooperative, as evidenced by the fact that at least on one occasion I felt constrained to direct him to perform an assignment which he was unwilling to do.

On another I felt obliged to avoid any issue of insubordination when he suggested that if I did not like the manner in which he performed an assignment I should either do it myself or assign it to another member of the staff. I completed the assignment myself. He was very indulgent about leaving the office during business hours.

He was also extremely arrogant and critical of his fellow associates on various occasions, characterizing them unflatteringly in their presence and in the presence of others.

(Signed) THOMAS F. WILSON.

6/30/52

A CERTIFIED TRUE COPY:

P. J. SADOTI,
Acting for Harrison E. Meyer,
Personnel Officer

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JUN 13 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1957

No. 1088 / 92

A. LINCOLN GREEN, *Petitioner*,

v.

J. STANLEY BAUGHMAN, President, Federal National Mortgage Association, et al., *Respondents*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

A. LINCOLN GREEN,
Petitioner pro se

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IN THE

Supreme Court of the United States

October Term, 1957

No. .

A. LINCOLN GREEN, *Petitioner*,

v.

J. STANLEY BAUGHMAN, President, Federal National Mortgage Association, et al., *Respondents*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

A. Lincoln Green prays that a writ of certiorari issue to review the judgments of the Court of Appeals for the District of Columbia Circuit, entered January 12, 1956 and January 31, 1957.

OPINIONS BELOW

The first opinion of the Court of Appeals (App. p. 1a) is reported at 229 F. 2d 33, 97 App. D.C. 150. The second opinion (App. p. 4a) has not been officially reported.

The opinion of the District Court (J.A. 9)* granting summary judgment in favor of petitioner is not officially reported. The District Court wrote no opinion with respect to its second order granting summary judgment in favor of the respondents.

JURISDICTION

The judgments of the Court of Appeals were entered January 12, 1956 and January 31, 1957. Rehearing by the Court of Appeals sitting en banc was denied March 25, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

QUESTIONS PRESENTED

1. Is a judgment on the merits valid in an action for wrongful dismissal where the court finds that a person who is not a defendant made the dismissal?

2. Is a decision of dismissal void for lack of authority and jurisdiction where the administrative officer's authority to employ and dismiss is limited to employees in grade GS 12 and below and petitioner was in grade GS 13?

3. Respondent, the administrative head of the agency, was named in the charges to receive the petitioner's answering affidavit. He signed the statement of charges and the decision. Three and a half years later the chairman asserted in an affidavit that the decision was his. Was the court below correct in ruling that the chairman had made the decision and was accountable in this action for it?

4. Are respondents estopped from showing that the chairman made the decision when they did not disclose the alleged facts for three and a half years and obtained deci-

* There are two joint appendices in the Court of Appeals, No. 12717 and No. 13500. References without the appeal number are to the joint appendix in No. 12717, which was used on both appeals.

sions and judgments on the ground that respondent, Baughman, had made the decision?

5. Is a decision consisting of four words, "the charges are sustained," a compliance with a statute requiring "reasons given in writing."

6. Respondent, Baughman, based his action on information in statements and conversations with employees, held after petitioner had submitted his answer. Can the respondent consider information outside the charges, which the employee had no opportunity to answer?

7. Are the charges stated specifically and in detail where they consist of allegations of the commission of unknown quantities of offenses without dates, details or names?

8. Was the chairman an administrative officer to make the decision where the by-laws provide that "the President shall be the chief executive officer" and "shall carry out and direct the business and affairs of the Association, subject to the general supervision of the chairman?

9. Where the statute prescribes a decision, is a recommendation and decision a compliance with the statute?

10. Is the dismissal of an attorney on charges, based on the uncorroborated statement of a girl of nineteen who alleged offenses committed over a period of sixteen months but had never complained until after her promotion by respondent, arbitrary, capricious and unreasonable?

11. Are arbitrary and capricious action, bias and prejudice, bad faith and sham proceedings, and undue influence and coercion, grounds for setting aside an administrative decision of dismissal?

STATUTES AND REGULATIONS INVOLVED

Sec. 14, Veterans Preference Act, 5 U.S.C., sec. 863.

Sec. 652(a), Lloyd-LaFollette Act, 5 U.S.C. 652(a).

Regulations of the Civil Service Commission.

5 CFR, sec. 9102(1).

5 CFR, sec. 22.3.

S1-28, Federal Personnel Manual, Civil Service Commission.

STATEMENT OF THE CASE

a. The Petitioner

Petitioner is an attorney, admitted to practice in 1924, and a disabled veteran, retired for disabilities in line of duty because of heart disease and hypertrophic arthritis of the lumbar spine, progressive, incurred after an injury to his spine on maneuvers. The following is a letter from his commanding officer:

"ARMY SERVICE FORCES
SAN FRANCISCO PORT OF EMBARKATION
FORT MASON, CALIFORNIA

19 July 1944

In Reply refer to:

To Whom It May Concern:

Captain A. Lincoln Green has been a member of my staff for the past five or six months. During that time, I have had opportunities to make a thorough appraisal of his ability. I have found him a careful, studious lawyer with a comprehensive grasp of his profession and a keen zeal for careful research and study. He is mature and his judgment is excellent. If I had an office in civil life, I would be delighted to have him associated with me. From my observation, I believe that he has a good knowledge of Corporation, Real Estate and Ad-

miralty Law. I shall be glad to answer any communications regarding Captain Green.

(signed) A. N. ZIEGLER
A. N. ZIEGLER
Colonel, J.A.G.D.,
Staff Judge Advocate."

Petitioner also served in the First World War with the company that was the first to leave for France and the first to sustain casualties. He is a member of the Association of the Bar of the City of New York, the Foreign Policy Association, the American Academy of Political Science, the American Society of International Law, and the Disabled American Veterans. He was assistant-counsel to the Ambulance Chasing Investigation in New York, Technical Advisor to the New York Constitutional Convention Committee and wrote that part of its publications entitled "The Pardoning Powers of the Governor."

Petitioner received an "excellent" efficiency rating except in one year when he received "very good" in a new position and except in 1952 when he received "satisfactory" under the law reducing the ratings to three, outstanding, satisfactory, and unsatisfactory. At the date of his dismissal he was in grade GS 13, earning $9,160.00 per year and had had more than fourteen years service.

b. The Administrative Proceedings

On July 14, 1952 general counsel handed petitioner a statement of charges, signed by respondent, Baughman, alleging under five titles the commission of unknown quantities of offenses over a period of twenty months without dates or details or specific offenses.

The charges under "1(a)" of the first title, "Improper Conduct toward Office Personnel," allege that petitioner was "at times rude and discourteous and used severe language" to his first stenographer and on one occasion "used

abusive language. These offenses, without the date or details of a specific act are alleged to have occurred during a period a year and a half before the charges were served.

The remaining charges are taken from the statement of a girl of nineteen who had been promoted by respondent before he obtained it. She had told her father and mother that she would give up her position before signing a statement. (J.A. 77). Prior to her promotion she had never complained during the entire period of sixteen months covered by the charges.

The charges under "1(b)" of the first title allege that petitioner's attitude toward his second stenographer was "on numerous occasions distasteful and unpleasant, insulting, rude, harsh, and abrupt," that on two occasions petitioner "became so enraged that you threw a small telephone book toward her and hit her desk," and on occasions said to her, "You come over here and you come fast," that he called his co-workers during this period ignoramus and imbecile. (J.A. 40). All this is charged without the date or details of a definite act or offense, without the names of co-workers. Nor does the information appear in the statements of the employees (J.A. 250, 270-278) upon which respondent says "The charges were based entirely." (J.A. 256).

The charges under the second title, Improper Use of Government Office and Property, allege the use over a period of twenty months of "the office and its miscellaneous equipment, including telephones, typewriters, file folders, stationery, filing cabinets, and other supplies and equipment, by making and receiving numerous telephone calls concerning your personal business; and by requiring your stenographer to type personal letters for you to keep personal books and records for you, and to make personal telephone calls for you." (J.A. 41).

The fact that petitioner was having his home built under the G.I. Bill during part of this period furnished the basis

for these charges. "Equipment" is mentioned twice and the telephone, three times. The personal work and telephone calls are not set forth, although the first is recorded in the stenographer's shorthand books and all telephone calls pass through the government operator. What use petitioner made of "cabinets" other than to hold one thin personal file is not stated. It is difficult to determine the nature of the offenses and the standards for their commission.

The charges under the third title, "Improper Use of Government Personnel," duplicate those under the second. It is charged that "the improper use of the stenographer . . . required her to devote practically three-fourths of her time to your personal work, leaving only approximately one-fourth of her time available for her government duties." (J.A. 42). This over a period of sixteen months. The charges do not give details showing how a supervised employee perpetrates this abuse.

The charges under the fourth and fifth titles have been held insufficient by the Commission. Though not in issue, those under the fifth title (J.A. 43) are significant. Petitioner is charged with an argumentative attitude and unwillingness to make changes in his letters and opinions.

Petitioner had refused to write a memorandum recommending $5,000.00 in settlement of a claim by an attorney. He had arrived at a figure of $3,500.00, based on averaging the estimates of three attorneys. (J.A. 131). Another attorney wrote the desired memorandum for the file, which general counsel signed. General Counsel arrives at the figure of $5,000.00 by accepting the highest of the three estimates "in the interests of liberality." (J.A. 135). The memorandum bears the same date as petitioner's but was written later, as it shows on its face.

On April 3, 1952 petitioner had drafted a letter holding that mortgages on leaseholds were purchasable in accord-

ance with the express language of the statute (J.A. 139). Some weeks later general counsel told petitioner to draft a letter holding that they were not purchasable but pointed to no error in petitioner's original opinion. Petitioner reluctantly collaborated in drafting the letter. (J.A. 140).

In September, 1951, general counsel had signed a letter drafted by petitioner holding that a deposit of $625.00 was not returnable. In April, 1952 he asked petitioner to draft a letter justifying the return. Petitioner reluctantly complied. (J.A. 109).

After these and similar incidents respondent offered petitioner an administrative position, saying that petitioner was not very busy at the law. Respondent had discussed this plan for removing petitioner from the legal division with general counsel. Petitioner pointed to the recent employment of an attorney by respondent to explain why he was not very busy and refused to leave his position for respondent's recent appointee, saying that he was a lawyer and preferred the law. Respondent said:

> "All right, no hard feelings. People generally prefer the administrative side and I thought you would." (J.A. 100).

Respondent shortly thereafter, promoted petitioner's stenographer, a girl of nineteen (J.A. 206). She signed a statement. On July 7th, two weeks after, general counsel phoned petitioner, "Can you step in here for a minute, Abe?" Respondent was present. General counsel said:

> "We want you to get another job. I don't think you have been very happy here." (J.A. 37).

A draft of the charges was then on his desk. General counsel asked whether petitioner had any interviews scheduled, saying that petitioner's supervisor had obtained a position at a higher grade. When petitioner said that he had not, general counsel said:

"If you don't get another job, charges will be preferred." (J.A. 37)

Petitioner said that he was not aware of anything he had done to warrant charges and asked how he could obtain another position if charges were contemplated. General counsel said:

"That can be arranged." (J.A. 37).

General counsel then read some of the charges. When the charge of the use of government stationery was read, respondent exclaimed, "Government paper!" Petitioner, the stenographer, afterwards admitted, used his own stationery. (J.A. 254).

Respondent said that petitioner viewed matters from the legal point, that he stayed in his room though sociable at parties. General counsel said that he had noted this last characteristic. Respondent pressed petitioner to consider changing his position. The conference ended with general counsel saying that there would be another and that in the meantime "we would both think matters over." (J.A. 51).

On July 11th, four days after this conference, general counsel signed a statement in which he said:

"Accordingly I must state my belief to be that his removal will be for the best interests of the Association." (J.A. 275).

This was one of the statements upon which respondent's determination "was based." (J.A. 203). General counsel had no knowledge of any offenses except from a reading of the stenographer's statement. (J.A. 206, 207, 210).

On July 14th the second conference was held. Petitioner was then under medical care. (J.A. 51). Petitioner said that if there had been anything in his conduct that general counsel disapproved, he would remedy it; that if he had been too persistent in maintaining his legal position, he

would no longer do so. General counsel replied that the situation had gotten beyond this, that matters had come to their attention that were serious. He then read the charge under the first title. When petitioner denied them, general counsel said:

> "What puzzles me is this. Why should she say these things if they aren't true." (J.A. 52).

Respondent said that petitioner had no cause to worry over his condition if he was innocent. At another point he said that petitioner could resign and thus avoid a trial. (J.A. 51).

General counsel handed petitioner the charges, signed by respondent. Petitioner asked who would preside at the hearing, believing then he was entitled to a hearing. General counsel answered, "Mr. Baughman." Petitioner asked for charges "specifically and in detail" pointing out the insufficiency of those served, and asked that respondent disqualify himself for bias, prejudice and interest:

> "You ordered or approved an investigation when the matters set forth in the statement of charges had never been the subject of complaint or warning. For what purpose, if not to form the basis for charges that would force me out of my job? You took an active part in the discussions of July 7 and July 14 when I made my denials and produced evidence of the untruthfulness of some of the charges. If you did not believe those denials then, you will not believe them at the trial. In signing this statement of charges you showed a ready willingness to sign charges which on their face are incredible. You gave me the alternative of resignation to escape trial. It is the prosecutor who, being convinced of the guilt of the accused, offers the accused the chance to take a lesser plea. Every single act of yours has been an act of ready willingness to believe in the guilt of a lawyer of almost 30 years standing at the bar. When your Chief Legal Advisor asked me the rhetorical question why this girl would make the alleged statements if they weren't true, you made no objection to the assumption of guilt, to the

unfairness of placing upon me the burden of explaining the mental reactions and reasonings of a girl of 19 while under the control of your investigator. Indeed, there is no element of justice in this proceeding in which you have taken an active part. There are matters in issue in which you are an interested party." (J.A: 59):

On September 19, 1952 petitioner was handed the decision, signed by respondent, reading:

"I am authorized to notify you that the decision is that the charges are sustained . . . ." (J.A. 142).

Petitioner appealed "from the decision of J. Stanley Baughman discharging him from his position . . . ." (J.A: 144)

Respondent, four days before on September 15, 1925, had made a recommendation and put the decision up to the Chairman of the Board of the corporate agency:

"The following resume and analysis thereof, together with my findings and my recommendation, are presented for your consideration and decision" (J.A. 257).

Recommendations

Based on my findings I recommend that Mr. A. Lincoln Green be discharged . . . and that a letter of notification be sent Mr. Green substantially in the form of the attached.

J. S. Baughman, President

Approved:

Raymond M. Foley,
Chairman of the Board. (J.A. 270)

Respondent treated the charges as allegations to be proved by specific information outside the charges. This information he obtained from the statements of the em-

ployees and from conversations with them after petitioner had answered the charges:

> ". . . my recommendation for Mr. Green's discharge was based upon the statements of the employees after a personal interview with each and everyone of them, and upon Mr. Green's failure to overcome the statements of the employees in his answer." (J.A. 203).

> "After the answer in this matter had been filed, in considering the evidence in support of the Statement of Charges, I not only carefully reviewed the written statements of the witnesses, but I also orally interviewed the witnesses themselves." (J.A. 256).

Respondent had five statements of employees upon which he says he based his decision, but the only one that is material is that of the second stenographer whom he had promoted prior to obtaining her statement.

The first stenographer had refused to sign the statement prepared for her but had executed an affidavit, attached to petitioner's answering affidavit, saying that petitioner "did not use abusive language," that his words were, "Haven't I told you to bring your book when I buzz for you. I don't want to have to tell you again." (J.A. 115). When respondent learned of this he had a talk with her. She then confirmed the charges which she had first refused to confirm:

> "After Mr. Green had filed his answer, I talked to Mrs. Smith and she stated that all facts related in her original unsigned statement were true." (J.A. 258).

The administrative judge also talked with the other employees "to determine whether . . . they would be willing to stand back of their statements if they were called upon to do so." They said "they would stand back of their statements given." (J.A. 205). Petitioner asked for their presence at the Commission's hearing. None appeared.

The second statement was that of general counsel but he knew nothing of the offenses. The charges in "1(a)"

allege that the first stenographer had complained to him of the use of abusive language and that he had warned petitioner. But when the Commission's investigator asked for precise language general counsel said:

> "I do not recall that she stated the precise language that Mr. Green had used on any of these occasions." (J.A. 205).

The third statement is by the attorney who had been recently appointed by respondent and shared the room with petitioner and the second stenographer for a few months. It contains the familiar characterizations but no corroboration of the discourteous remarks quoted or of her statement that petitioner had called him an imbecile. (J.A. 276).

The fourth statement is by petitioner's supervisor. (J.A. 278). Respondent and general counsel obtained his statement but refrained from eliciting a scintilla on the charges in issue. Yet it is to him that one turns for authoritative information on the charges. He has a duty to supervise.

The second stenographer alleges that petitioner called an attorney imbecile. Respondent enlarges the charge to include ignoramus, co-workers, and a period of sixteen months.

General counsel says:

> "Never in my presence did Mr. Green call any of the lawyers in the office by the names of 'ignoramus' or 'imbecile.'" (J.A. 207).

Petitioner's supervisor says:

> "I never heard Mr. Green use the epithet 'imbecile' or ignoramus' to anybody . . ." (J.A. 218).

Another attorney said:

> "He never called me an ignoramus or imbecile." (J.A. 221).

The stenographer alleges that petitioner used three-fourths of her time on personal work for a modest six or seven months. (J.A. 251). Respondent enlarges the charge to cover sixteen months. She reduces it, when questioned by the Commission's investigator, to one month. (J.A. 236).

The first stenographer refused to sign a statement and even this unsigned statement contained no accusation of the use of abusive language. Nevertheless, respondent charges petitioner with the use of abusive language. Respondent says that "the charges were carefully drawn . . . and based entirely on the statements of the witnesses." (J.A. 256).

The charge alleges that petitioner became enraged and threw a small telephone book toward her twice. Questioned by the Commission's investigator, it was once. Petitioner was "very angry." The "throwing" was accompanied by a request to look up a number herself. The telephone book that was thrown is identified as the RFC telephone book, the inter-office directory of a few sheets of paper (J.A. 233).

There was available to respondent the testimony of two eye-witnesses, his own two assistants who were in the room with petitioner and the stenographer for a time. They stated under oath to the Commission's investigator:

> "I did not observe any discourtesies on Mr. A. L. Green's part either toward his stenographer or other members of the Legal Staff, although it did appear that his relationship with other attorneys of the Legal Branch was not entirely congruent." (J.A. 240).
>
> "With reference to improper conduct toward office personnel—during these six one week periods that I was in the office at all, I didn't see any indication of mishandling or mismanagement as far as he was concerned with the girl . . . ." (J.A. 242).

Three other employees with whom petitioner had had contacts in the course of his duties also stated to the Commission's investigator:

A Mr. Philip Sadoti said:

"Mr. Green would seek my advice during these contacts. In my meetings Mr. Green would accept the advice without dissenting comment. My limited contacts with Mr. Green were all conducted on a pleasant basis . . . ." (J.A. 250).

A Miss Mary L. Smith said:

"I worked in the room next to Mr. Green's room. Occasionally I took dictation from Mr. Green. He was nice to me, as he was glad to get someone to take his work. He always treated me all right. I would go in and take the work and go ahead. During the few instances I took some work from Mr. Green there was no indication of discourtesy." (J.A. 246).

A Mr. Allan C. Tyler said:

"In my limited business dealings with him I experienced no rudeness or discourtesy from Mr. Green. My remaining contacts with Mr. Green were limited to going out to lunch with him and driving home on a few occasions during which matters of general interest were discussed, all of which were pleasant." (J.A. 249).

A former stenographer from 1945 to 1949 said:

"At the time when she first worked for him, she had been employed as a clerk-typist and had had little experience in taking dictation. Mr. Green was patient and spent considerable time in teaching deponent. As a result of a reduction in force deponent was transferred out of the legal division.

In the four years that deponent worked with Mr. Green, he never used abusive or insulting language. He never said 'God damn it to Hell.' He acted courteously and with consideration. He never yelled at deponent. He never threw books about in a loss of temper. Deponent never heard him use the words, imbecile or ignoramus. When he called deponent to take dictation, he would say: 'Would you please.' Deponent never knocked on his desk to call his stenogra-

plier. He never said to deponent: 'You come here and you come fast.'" (J.A. 116).

This is the Chief Law Officer's version of the facts in these sworn statements:

> "The testimonies favorable to Mr. Green were submitted by his former secretary and a former co-worker who were acquainted with him during an entirely different period of time than that covered in Charge I. The witnesses who were associated with the appellant during the period covered by Charge I testified that his conduct toward office personnel was improper . . . . We cannot close our eyes to the indisputable evidence which establishes that his conduct was improper as charged." (J.A. 172).

It is to an employee's supervisor, who has a duty to know and to supervise, that one turns for information. The supervisor refused to execute an affidavit for petitioner. But when placed under oath by the Commission's investigator he affirmed the truth of the following statement in the affidavit he refused to execute (J.A. 10, No. 13,500):

> "Mr. Green never called deponent ignoramus or imbecile. Deponent knew that Mr. Green was making telephone calls with respect to the construction of his house and that he occasionally dictated a personal letter to his stenographer. The personal work was not extensive and did not interfere with Mr. Green's official work. The door between deponent's and Mr. Green's office was generally open. He never heard Mr. Green use abusive language to his stenographer . . . ." (J.A. 119).

This is the Chief Law Officer's view on this evidence:

> "As for the appellant's statement that he engaged in this personal work with the knowledge and approval of his supervisors, the evidence simply does not support him." (J.A. 178).

The first stenographer, after the talk with respondent, embellishes the words petitioner addressed to her:

> "When he discovered that I had not brought my stenographic notebook he then flew into a rage, pounding his fist on the desk, and shouted at me in harsh tones; 'Haven't I told you to bring your note book when I called for you. I don't want to have to tell you again.'" (J.A. 247).

Despite the characterization, the words after "harsh tones" establish that petitioner did not use abusive language.

The chief law officer excises these words and gives this truncated version:

> "With respect to the notebook incident, she said that he flew into a rage, pounded the desk with his fist and shouted at her in harsh tones." (J.A. 170).

He now finds that petitioner used abusive language by expressing incredulous disbelief in the words suppressed:

> "He states, however, that on this occasion he was not abusive but merely said to her, 'I don't want to have to tell you again to bring your notebook with you when I buzz.'" (J.A. 169).

In the process he puts words in petitioner's mouth.

The first stenographer in her affidavit attributed the following words to petitioner:

> "Please answer the phone in my name as you have been assigned to me." (J.A. 115).

After respondent spoke to her, this becomes:

> "On the first occasion, Mr. Green criticized me sharply when I answered the telephone in Mr. Coolidge's name." (J.A. 246).

The chief law officer alters this by truncation:

"In her affidavit to the Commission, Miss Smith stated that Mr. Green had criticized her sharply." (J.A. 170).

He, too, suggested resignation. Petition answered in a letter:

"This did not appear warranted by anything that I had said." (J.A. 152).

Petitioner asked the chief law officer to request the employees who had given statements to appear at the hearing, pointing out that the testimony of the supervisor and the second stenographer is "especially important to me." (J.A. 160). According to respondent they had stated that if called they would stand back of their statements.

A former chairman of the Commission had said:

"Furthermore, most of the witnesses in Section 14 proceedings are civil service employees and the Commission is in a position to require the testimony of such civil service employees. Whenever a veteran's representative in a Section 14 case requests that any civil service employee be a witness at the hearing, such a witness is required to come to the hearing and testify.

For these reasons the Commission does not believe that it should ask Congress to give it the power of subpoena in Section 14 cases." (J.A. 192).

Petitioner's request was denied on the ground that "the Commission had no subpoena power." (J.A. 29). Petitioner's supervisor said that he would have appeared if the Commission had requested his presence. (J.A. 29).

c. The Court Proceedings

Petitioner commenced an action in the District Court claiming that the charges were not stated specifically and in detail. He alleged that he had commenced the action prior to hearing in the Commission because the lack of

information and specificity of the charges prevented him from defending himself and disproving the charges. The District Court found that one of the charges, the use of abusive language, was specific and upheld the dismissal on that one charge. The Court of Appeals held that the administrative remedy had not been exhausted.

Petitioner exhausted the administrative remedy and commenced this action. Respondent filed no answer but made a motion for summary judgment contending that the administrative procedures complied with the statute and that bias and prejudice, bad faith and sham proceedings, arbitrary and capricious action, undue influence and coercion, were not grounds for setting aside the decision of dismissal of an administrative officer.

The District Court granted petitioner's motion upon the ground that the charges were not stated specifically and in detail. The Court of Appeals reversed, holding that the charges were specific and in detail and remanded for disposition of the remaining issues.

Respondents then changed the parties and issues. Respondent Laughman contended that he had not made the decision, that it had been made by the chairman. He introduced the by-laws of the corporate agency to show that he had no authority to make the decision. He had no authority. Under sec. 14 of the by-laws the chairman had authority to employ. The acting-chairman delegated that authority, including "separations for cause", to the President but limited it to employees in grade GS 12 and below. (J.A. 5, 7, No. 13,500). Petitioner was in grade GS 13.

As proof that the chairman had made the decision respondent introduced the affidavit of the chairman reciting the operations of his mind and claiming that it was his decision:

> "Based upon this study, I came to the independent conclusion that the charges were sustained and that Mr. Green should be discharged. I thereupon noted my

approval upon Mr. Baughman's memorandum and authorized and directed Mr. Baughman to notify Mr. Green by letter of my decision." (J.A. 2, No. 13,500).

The affidavit was introduced three and a half years after respondent had signed the decision of dismissal, one and a half years after his motion had been made. During this time he obtained judgments in the District Court and the Court of Appeals on the basis that he had made the decision. No permission was asked under F.R.C.P. 56(e) to submit a supplemental affidavit.

The chairman's affidavit merely recounts his action in approving respondent's recommendation, though it implies more. The Court of Appeals accepted the operations of the chairman's mind as evidence, quoting his "careful consideration" and "independent conclusion." It held that respondent, Baughman, did not dismiss petitioner because he lacked authority; that the chairman dismissed petitioner because he had authority and that he acted pursuant to the statute.

The Court of Appeals held that the chairman was an administrative officer of the agency, defining administrative officer as "administrative officer in respect to employment." The chairman's affidavit did not explain why he resorted to this singular and laborious method of making a decision when he could have signed the letter prepared by respondent.

Petitioner made the point that the frequent performance of acts, not criminal or immoral, openly in the office for twenty months while under supervision established as a matter of law the knowledge of the supervisor and the fact that the alleged acts were not considered offenses when performed. The lower court said:

> "The thrust of this point is that repeated offenses, accompanied by forbearance on the part of superior officers, or fear on the part of subordinates, or distaste on the part of either or both for disciplinary measures,

afford an immunity to the perpetrator. The fallacy of the position is evident in its statement."

The fallacy is secondary to this speculation in aid of a decision of dismissal. General counsel and respondent knew nothing of the offenses. Without knowledge there can be no forbearance or distaste. Nor can one speak of forbearance and distaste where an administrator on the statement of a girl of nineteen assumes the guilt of an attorney of many years at the Bar even before receiving his answer. Petitioner has no power or authority that would prevent a person from resenting the scorn and contempt in the words, "You come here and you come fast," repeated over sixteen months.

The court below is unmindful of the harrowing fear that would possess a stenographer, called on the carpet and put to the question by her administrative head because she had refused to endorse his charges. Our innate and traditional sense of fairness and decency protests against this abuse of power and authority.

The court below said:

> "The chief law officer specifically found no support for Green's allegation that his superiors were ignorant of the law, lacked ethics and were incompetent."

The record facts do not justify this statement. This, however, is incidental to the significance of the fact that the foregoing is alien to the matter in which it is set and irrelevant to the issues. The solicitude of the lower court for reputation is excited in favor of those who charge an employee with abusive language without knowledge of a word of abusive language, with calling his coworkers ignoramus and imbecile without the statement of a single coworker, with using three-fourths of the time of a stenographer over a period of sixteen months on personal work, a fantastic accusation; who cull from the probative evidence

available the statement of a girl of nineteen previously promoted by them, who put to the question an employee who would not sign a statement.

Surely a measure of this solicitude could be justly bestowed upon the victim of these practices, fighting for reputation and livelihood against those who hold and wield the power and authority of government.

REASONS FOR GRANTING THE WRIT

The writ should be granted for the following reasons:

(1) The Court of Appeals has departed from the accepted and usual course of judicial proceedings. Without definite parties and issues, justice is impossible. In an action against the administrative head of a corporate agency for wrongful dismissal, evidenced by a decision over his signature, the Court of Appeals ruled on the basis of a few words by the Chairman of the Board of the agency, introduced three and a half years after the commencement of the proceedings, that the chairman made the decision of dismissal.

The court affirmed a judgment on the merits, though the chairman is not a defendant subject to the jurisdiction of the court.

It is fundamental that a judgment on the merits can be made only if the person who committed the act claimed to be wrongful is a defendant; that accountability and liability evidenced by a writing over a signature cannot be altered by extrinsic or parole evidence; that the act of one without authority is void; that a signature is a representation of authority and accountability; that a defendant is estopped by a delay of three and a half years from introducing facts changing his position; that an employee and plaintiff is entitled to know the maker of the decision and the writings composing it. All these principles have been ignored by the court below. A departure from any one of them is fatal to a plaintiff's case.

(2) The administrative procedures sanctioned destroy the statutory safeguards in the Lloyd-LaFollette Act and the Veterans Preference Act, subjecting 2,300,000 employees to arbitrary discharge.

The statutes prescribe "reasons given in writing" for a dismissal. The decision of dismissal consisted of four words, "the charges are sustained," without reasons. This ruling conflicts with that of the Court of Claims on identical facts and with the uniform rulings of the lower court.

The statute and regulations prescribe charges "specifically and in detail." The charges alleged unascertainable quantities of offenses without dates, details, or names, composed substantially of characterization.

The statute and regulations provide that the decision shall be based on the information in the charges. The administrative judge based his action on written statements and conversations with employees, held after petitioner had submitted his answer, using the charges as allegations to be proved.

The statute provides for a decision by an administrative officer. The administrative officer made a recommendation for the decision of the chairman and when it was approved, signed the written decision.

(3) The reputation and right to work of an attorney of many years at the Bar is involved. The Court of Appeals has upheld a dismissal that deprives an attorney of more than thirty years at the Bar of reputation and means of livelihood, now and in the future, on the uncorroborated statement of a girl of nineteen who had never complained of a single offense over the entire period of sixteen months prior to her promotion by the administrative head.

(4) The facts are undenied. The issue is whether arbitrary and capricious action, bias and prejudice, bad faith and sham proceedings, coercion and undue influence, constitute grounds for invalidating an administrative decision of dismissal. The Court of Appeals and the Court of

Claims are in direct conflict. The issue is presented for the first time to this court. It is one of great importance to all government employees. Upon its decision depends the substance and reality of the safeguards in the statutes.

ARGUMENT

I

THE LOWER COURT'S JUDGMENT ON THE MERITS IS IMPROPER AND INVALID IN THE ABSENCE OF THE CHAIRMAN AS A DEFENDANT.

The court below held that the chairman made the decision of dismissal. Petitioner assumes for the moment that this ruling was correct. A court may not proceed to a consideration of the merits if the person who committed the act, claimed to be wrongful, is not a defendant, subject to the jurisdiction of the court.

Blackmar v. *Guerre*, 342 U.S. 512
Williams v. *Fanning*, 332 U.S. 490, 493
Webster v. *Fall*, 266 U.S. 507, 510
Gnerich v. *Rutter*, 265 U.S. 388, 393

II

THE DECISION OF DISMISSAL, SIGNED BY RESPONDENT, BAUGHMAN, IS VOID BECAUSE OF RESPONDENT'S LACK OF AUTHORITY AND JURISDICTION.

A signature without qualification is a representation of responsibility and accountability. Respondent was the "chief executive officer" empowered to "carry out or direct the business and affairs of the Association." (J.A. 5, No. 13,500). He was named in the charges to receive the evidence. He lacked authority to discharge petitioner in grade GS 13. (J.A. 5, No. 13,500). His purported decision is therefore void. *Peters* v. *Hobby*, 349 U.S. 331, 340.

The court below has held that a defendant, sued for a wrongful dismissal evidenced by a decision over his signature, can introduce parole or extrinsic evidence to show that another was accountable for the decision. In *Nash*

v. *Towne*, 72 U.S. 689, 703, 704; the court held that parole or extrinsic evidence can never be introduced to show that a person who purported to act as principal was an agent.

The decision of the court below destroys the statutory safeguards of 2,300,000 employees, veteran and non-veteran. The Lloyd LaFollette Act and the Veterans Preference Act apply to demotions, suspensions, furloughs without pay and reductions in rank or pay. The court's ruling means that the signature does not indicate the maker of the decision, that an employee can be kept in the dark, in this case for three and a half years, as to the identity of the maker of the decision and the writings composing it. The Court discusses three writings. Petitioner received but one. Without definite knowledge of the maker and the writings, an employee cannot show that the maker was biased, was not an administrative officer, or had not followed the statutory procedures. He does not know whom to name in an action as a defendant.

In this age when the existence of the nation may hang on the prompt execution of commands meaning life or death to millions, a subordinate would indeed be in a quandary if he could not rely upon the signature to an order. An attorney could not advise his client. He would not know when a court would substitute a stranger for a defendant upon some verbal; self-serving declaration.

In sum the Court of Appeals has denied to a signature its meaning and consequences. It has accepted the operations of the mind,—independent conclusion, careful consideration, my decision,—to contradict an official, signed, writing, prescribed by statute. It has accepted evidence upon a review though the administrative proceedings have long been closed. It has accepted an affidavit as evidence, though it contained not a single fact, "admissible in evidence." (F.R.C.P. 56e). It has held that employees can be kept in ignorance of the maker of a decision and the writings constituting it, depriving them of the safeguards of the statutes.

Petitioner submits that the Court of Appeals "has so far departed from the accepted and usual course of judicial proceedings" and "so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision." (Rule 19).

III

RESPONDENTS HAVE WAIVED THE OBJECTION OR DEFENSE THAT RESPONDENT, BAUGHMAN, DID NOT MAKE THE DECISION AND ARE FURTHER ESTOPPED BY THREE AND A HALF YEARS OF SILENCE AND ACTION FROM ALLEGING THE FACTS NOW.

The objection or defense that respondent, Baughman, did not make the decision is waived unless presented within the time allowed in Rule 12, F.R.C.P. Defendants have a sure means of defeating claims if they can keep plaintiffs in ignorance of defenses for three and a half years. Defenses can then be concocted, for the evidence of their concoction is obliterated by time.

Respondents are further estopped by their admissions and actions over a period of three and a half years. The allegations in the complaint stand admitted. Among these is the allegation that "on Sept. 19, 1952, a decision, signed by the defendant, Baughman, was rendered, dismissing plaintiff." (J.A. 2). Respondents made motions and obtained judgments upon the grounds that petitioner had not exhausted the administrative remedy and that the charges were specific. They were entitled to make these motions and receive the relief granted only if respondent, Baughman, had made the decision. If he had not, he was not legally interested in the facts, issues or the relief requested in his motions. Respondents have put petitioner to great expense. They have had the benefits of the judgments obtained by them and now would repudiate the fact, without which they could not have obtained the judgments.

Their contention would relegate petitioner to an action against the chairman. Respondent's delay spells certain defeat for petitioner in an action against the chairman.

No litigant can hope to gather evidence to make good a claim against a person whose identity is first disclosed after the lapse of three and a half years.

In *Davis* v. *Wakelee*, 156 U.S. 680, 689, the court said:

> "It may be laid down as a general proposition that, where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him."

IV

THE HOLDING OF THE COURT BELOW THAT AN ADMINISTRATIVE DECISION OF DISMISSAL, "THE CHARGES ARE SUSTAINED," IS A COMPLIANCE WITH THE STATUTORY SAFEGUARD REQUIRING REASONS IN WRITING CONFLICTS WITH THE UNIFORM DECISIONS OF THE COURT OF CLAIMS AND THE COURT BELOW AND SUBJECTS 2,300,000 EMPLOYEES TO ARBITRARY DISCHARGE.

The Veterans Preference Act enjoins in its opening words that "no preference eligible . . . shall be discharged, suspended . . . , furloughed . . . , reduced in rank or compensation, or debarred for future appointment except . . . for reasons given in writing." The Lloyd-LaFollette Act, also in its first words, enjoins that "no person in the classified service . . . shall be removed . . . or suspended . . . except for . . . reasons given in writing." The regulations, 5 CFR, sec. 9.102(1), prescribe that "the employee shall be furnished at the earliest practical date with a written decision" and "shall be notified in the decision of the reasons for the action taken and its effective date."

The Court of Claims in *Blackmar* v. *U.S.*, 120 F. Supp. 408, held that a decision in identical language, "The charges against Mr. Blackmar are sustained," was not a compliance with the procedural requirements of the Veterans Preference Act.

The court below has uniformly held that the statute requires reasons specifically identified with the charges. In *Mulligan* v. *Andrews*, 211 F. 2d 28, 30, the lower court said:

> "Plainly, and we so hold, the requirement of 'reasons' for removal is not satisfied in this case by the conclusion of 'unsuitability' based upon vague references to appellant's answer and 'facts developed during the investigation.' The decision failed to disclose which of the charges contained in the notice of proposed adverse decision were relied upon for removal . . . Under the provisions of the statute and of the regulations, outlined above, only findings upon such charges, *specifically identified*, can constitute the 'reasons' required in the adverse decision." (Emphasis supplied)

In *Kutcher* v. *Higley*, 235 F. 2d 505, 509, the lower court said:

> "Since only findings on the charges, specifically identified, can constitute reasons for removal, a reading of the charges must demonstrate the reasons for dismissal, assuming all the charges are sustained."

In *Both* v. *Brownell*, 215 F. 2d 500, 502, cert. den. 348 U.S. 863, the lower court held that no formula "can obviate the requirement of the Lloyd LaFollette Act that 'No person in the classified civil service shall be removed . . . therefrom without notice and reasons given in writing."

The phrase, the charges are sustained, is a formula. A rubber stamp with these words can end the career of an employee of long standing. Specific findings compel a scrutiny of the evidence. A blanket decision requires none. The formula invites haste and indolence, offers a cover for bias.

The lower court has demonstrated its error by setting forth the findings which it has held need not be stated. Summarizing the charges and evidence, it says:

> "When such charges are sustained, surely no more potent reasons for discharge for the good of the government can be assigned."

The court has supplied the reasons. In the process it has forgotten that the issue is whether the procedural safeguards in the statute have been observed. The statute must be observed even if the reasons for discharge are potent.

It is not the function of a court upon review to "spell out" findings. *United States* v. *Chicago, M., St. P. & P. R. Co.*, 294 U.S. 499, 510. In *Wichita R.R.* v. *Pub. Util. Comm.*, 260 U.S. 48, 59, the court, speaking through Chief Justice Taft, said:

> "It is a wholesome and necessary principle that such an agency must pursue the procedure and rules enjoined and show a substantial compliance therewith to give validity to its action. When, therefore, such an administrative agency is required as a condition precedent to an order, to make a finding of facts, the validity of the order must rest upon the needed finding. If it is lacking, the order is ineffective.
>
> It is pressed on us that the lack of an express finding may be supplied by implication and by reference to the averments of the petition invoking the action of the Commission. We cannot agree to this . . . We rest our decision on the principle that an express finding of unreasonableness by the Commission was indispensable under the statute of the State."

The decision of the lower court lays the basis for the reintroduction of the practice of discharge for bias or politics and exposes government employees to discharge without reason. Its decision is in conflict with its uniform decisions in the past and with a decision of the Court of Claims, establishing the law in that court.

V

THE CHARGES ARE NOT STATED SPECIFICALLY AND IN DETAIL AND CONTAIN NO INFORMATION THAT CAN BE ANSWERED.

The Veterans Preference Act requires that the employee be given a written notice "stating any and all reasons, specifically and in detail." The regulation, 5 CFR, sec. 9.102(1), requires that "the notice shall set forth, specifically and in detail the charges preferred against him." The right to answer presumes charges that can be answered.

Blanket charges, accusing en masse, charges of alleged discourteous remarks without date or context to identify them, charges accusing of a personal use of the stenographer for three-quarters of her time for sixteen months without a statement of the personal work, are impossible of answer.

In *Blackmar* v. *U.S.*, 120 F. Supp. 408, 414 (Ct. Cls.), the charges consisted of allegations of "numerous" offenses, "frequently" and "repeatedly" committed over a period of time. The court said:

> "There would seem to be no great difficulty in specifying such alleged derelictions and such detailed information was doubtless in the agency's possession at the time, since it now urges that its awareness of these facts prompted the dismissal action . . .
>
> It will be noted that no instances are cited, no dates (not even approximate ones) given . . . It would be difficult for the veteran to join issue with the agency on such a charge unless he was prepared to prove several broad negatives."

In *Deak* v. *Pace*, 185 F. 2d 997, 999, a case involving security, the court below held that "the information must be sufficient to inform the employee with reasonable certainty and precision," that employees must be "informed of the dates, places and organizations referred to." Otherwise their right to answer is limited to a general denial.

In *Money* v. *Anderson*, 208 F. 2d 34, 38, the lower court held that names and dates must be stated in the charges.

Blanket charges of indefinite quantities of offenses and charges consisting of characterization are flexible. In *Anti-Fascist Comm.* v. *McGrath*, 341 U.S. 123, 176, Mr. Justice Douglas said:

> "The charge is flexible; it will mean one thing to one officer, another to some one else. It will be given meaning according to the predilections of the prosecutor . . . These flexible standards, which vary with the mood or political philosophy of the prosecutor, are weapons which can be made as sharp or as blunt as the occasion requires. Since they are subject to grave abuse, they have no place in our system of law."

The administrative judge may not base his determination on information outside the charges. The charges are not allegations to be proved by evidence. If the specific information is not in the charges, the employee has no means of acquiring it afterwards. The respondent relied upon the statements of the employees and personal interviews with the employees after petitioner answered. (J.A. 203, 256). The charges were bare allegations to be proved by information outside the charges, as the following extract from respondent's resume of the evidence shows:

> "CHARGE I. IMPROPER CONDUCT TOWARD OFFICE PERSONNEL
>
> (a). It is charged that Mr. Green used improper conduct toward officer personnel . . . It will be seen from Mrs. Smith's unsigned statement that he used severe language toward her about answering the telephone for the other lawyer who at that time shared the office with Mr. Green. . . . The secretary was correct in saying 'Mr. Coolidge's office when she answered the telephone, and, further there was no need for severeness." (J.A. 257).

Interviewing employees upon the issues after answer is a dangerous abuse. The information imparted in such conversations may be rumors of immoral or criminal conduct, of disloyalty. S1-28 of the Federal Personnel Manual of the Commission provides:

> "A decision adverse to the employee must be based only on the reasons given in the notice which he had an opportunity to answer. No other reasons are valid as a basis for the adverse decision."

There is no way of knowing the reasons that influenced the judge when he wanders afield collecting information. It is no answer that all the information was placed in the Commission's appeal file and made available for inspection. Information after decision is futile. The statute requires information before answer. In *Deak* v. *Pace, supra,* p. 1000, the court below said:

> "Nor do we think that information given in cross-examination at the hearing can serve as a substitute for the full information required by the statute to be given thirty days before the prescribed time for submitting defensive statements and affidavits."

The court below has sanctioned procedures that deprive the employee of the right to know the charges and to answer.

VI

THE CHAIRMAN WAS NOT AN ADMINISTRATIVE OFFICER OF THE AGENCY.

Under the Veterans Preference Act the decision must be made by "the administrative officer so acting." This leaves the initial determination in the operating head who would be expected to know more about the character and actions of the employee than a person with no administrative duties. *Peters* v. *Hobby*, 349 U.S. 331, 345.

Under sec. 19 of the by-laws respondent was the operating head:

"The President shall be the chief executive officer of the Association and shall carry out or direct the business and affairs of the Association, subject to the general supervision of the Chairman . . ." (J.A. 5, No. 13,500).

The lower court's definition of administrative officer to mean "administrative officer in respect to employment" does violence to the plain meaning of plain language.

VII

THE PROCEDURE OF RECOMMENDATION AND DECISION VIOLATES THE STATUTE.

The Veterans Preference Act provides for a decision. It centers responsibility in one person. He must exercise his "own independent discretion." *Accardi* v. *Shaughnessy*, 347 U.S. 260, 268; *Morgan* v. *U.S.*, 298 U.S. 468.

The statute prescribes procedures to be followed by the administrative officer. The procedure of recommendation destroys the safeguards of the statute. A recommendation can be made on bias, rumor or information known only to the recommender. A recommender need not be an administrative officer or qualified to judge. Through the procedure here adopted the statutory safeguards are evaded.

VIII

ARBITRARY AND CAPRICIOUS ACTION, BAD FAITH AND SHAM PROCEEDINGS, BIAS AND PREJUDICE, COERCION AND UNDUE INFLUENCE, CONSTITUTE GROUNDS FOR SETTING ASIDE AN ADMINISTRATIVE DECISION OF DISMISSAL.

Respondents have taken the position that the admitted facts do not constitute grounds for setting aside an administrative decision of dismissal, that courts will intervene only because of a procedural defect. The court below gave attention to the facts "merely because of his persistent affirmation of arbitrary and capricious actions."

There is authority in its decisions, cited by the lower court, for the position taken by respondents. In *Bailey* v. *Richardson*, 182 F. 2d 46, 64, aff'd in 341 U.S. 918, and *Levy* v. *Woods*, 171 F. 2d 145, 146, the lower court, quoting from *Golding* v. *United States*, 78 C. Cls. 682, 685, cert. den. 292 U.S. 643, said:

> "The allegations that plaintiff was innocent of the charges preferred against him * * * and that the investigation which resulted in his removal was biased, prejudiced, and unfair, are immaterial."

In *Knott* v. *U.S.*, 121 F. Supp. 630, *Levy* v. *U.S.*, 118 C. Cls. 106, 111, and *Gadsden* v. *U.S.*, 78 F. Supp. 126, 127, the Court of Claims held that arbitrary and capricious action, bias and unfairness, invalidate the dismissal. The Court of Claims overruled the *Golding* case in *Levy* v. *U. S.*, *supra*.

Both courts claim support for their views in the decisions of this court. In *Gadsden* v. *U.S.*, *supra*, p. 128, the Court of Claims said:

> "Both this court and the Supreme Court have many times held that if the decision is arbitrary or capricious or so grossly erroneous as to imply bad faith it will be set aside."

The court below cites *Keim* v. *U.S.*, 177 U.S. 290, and *Eberlein* v. *U.S.*, 257 U.S. 82. The latter case is cited by the Court of Claims in the *Blackmar* case, *supra*, at p. 413 for its view. Confusion is added in *Anti-Fascist Comm.* v. *McGrath*, 341 U.S. 123, 185, where Mr. Justice Jackson cited the *Golding* case for the proposition that court will not review discretionary action in ordinary dismissals although "the officer taking the action is alleged to have acted in a biased, prejudicial and unfair manner."

This issue is presented to this court for the first time. Neither *Keim* v. *U.S.* nor *Eberlein* v. *U.S.* hold that a decision can be based on bias but assume the exercise of an

honest judgment. Further, these cases were based on lower court decisions before the enactment of the Lloyd-LaFollette Act and the Veterans Preference Act. The statutory safeguards are a phantom if bias can be exercised.

We live in an age of inexorable, unforgiving, records that pursue through the future. A dismissal on charges may write finis to government employment. But it is the beginning for the employee, the beginning of anxiety and want, of a struggle for survival.

An attorney's position is one of trust and confidence. No one will employ an attorney dismissed on charges. It becomes vital, then, that these records that bid fair to dominate our lives reflect the truth so far as humanly possible. When the record is an administrative judgment that is challenged in court, petitioner submits that it is the function of the court to determine whether the administrative judgment is based on bias and bad faith. Petitioner believes that this court grants no immunity to bias, that it knows only one kind of judgment.

Petitioner offers the following from the Commonweal of May 25, 1956, p. 193 as more in keeping with our practice, ideals, and opinion to-day:

> "It seems to us that a man does have certain specific rights in this matter of employment. In the case of a government job, he has a right to fair and equal treatment . . . If the man is discharged arbitrarily or on very flimsy reasons, that action cannot be dismissed lightly. In very much the same way, a man in private employment has comparable rights, rights recognized in most industries. If he is dismissed without adequate cause, we again do not see how the action can be brushed aside on the ground that he has no right to that specific job. Somewhere, sometime in this matter of employment, a man's right to life and the means to sustain it has to become specific."

CONCLUSION

The court deals here with petitioner's reputation and right to work. The position from which he has been deprived is vital to him, now that his disabilities have narrowed his opportunities. Petitioner prays that his petition for a writ of certiorari be granted.

A. Lincoln Green,
Petitioner, pro se,
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Alexandria, Va.

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12717

J. STANLEY BAUGHMAN, President; Federal National Mortgage Association, et al., *Appellants*,

v.

A. LINCOLN GREEN, *Appellee*.

Appeal from the United States District Court for the District of Columbia

---

Decided January 12, 1956

Mr. Paul A. Sweeney, Attorney, Department of Justice, with whom *Assistant Attorney General Burger* and *Mr. Leo A. Rover*, United States Attorney, were on the brief, for appellants. *Messrs. Lewis Carroll* and *Samuel J. L'Hommedieu, Jr.*, Assistant United States Attorneys, also entered appearances for appellants.

Mr. A. Lincoln Green, appellee, *pro se*.

Before PRETTYMAN, BAZELON and WASHINGTON, Circuit Judges.

PER CURIAM: This case is a sequel to *Green* v. *Baughman*, 94 U.S. App. D.C. 291, 214 F.2d 878 (1954). After our decision there, Mr. Green pursued his administrative remedy before the Civil Service Commission. The Commission, after hearing testimony, finally ruled that "Charges 1(a), 1(b), 2 and 3, as set forth in the notice of proposed adverse action [the Statement of Charges] are procedurally valid and that the removal action was justi-

fied and was for such cause as will promote the efficiency of the Service within the meaning of Section 14 of the Veterans' Preference Act of 1944, as amended, on the basis of these charges."[1]

After this decision of the Commission, Mr. Green filed an action in the District Court, seeking a declaratory judgment that his dismissal was illegal, as well as an order reinstating him in his Government post. On cross-motions for summary judgment, the District Court denied the Government's motion and granted summary judgment to Mr. Green. The court held each and all of the charges made against Mr. Green to be insufficient to meet the requirement of the Veterans' Preference Act that reasons for discharge must be stated "specifically and in detail." 5 U.S.C. § 863 (1952).

With deference, we are constrained to disagree with this ruling of the court. Charges 1(a), 1(b), 2 and 3, on which the Commission relied, appear to us to give the appellee sufficient information of the charges against him to afford him "a fair chance to defend himself. It is this consideration which must be controlling and not necessarily the standards of a criminal indictment." *Blackmar* v. *United States*, 128 Ct. Cl. 693, 703, 120 F. Supp. 408, 413 (1954). The charges here were lengthy and detailed: so lengthy, in fact, that we do not feel justified in burdening this opinion by reproducing them. The matters set forth are adequately identified as to time, place and persons. *Cf. Deak* v. *Pace*, 88 U.S. App. D.C. 50 at 52, 185 F.2d 997 at

[1] The Commission also determined that "Charges 4 and 5 are defective due to lack of specificity required by Section 14 of the Act and the Commission's Regulations." This determination, of course, does not of itself vitiate the Commission's decision that removal on the remaining charges was proper. Deviny v. Campbell, 90 U.S. App. D.C. 171 at 174, 194 F.2d 876 at 879, cert. denied, 344 U.S. 826 (1952). See also Williams v. Cravens, 93 U.S. App. D.C. 380, 381, 210 F.2d 874, 875, cert denied *sub nom.* Williams v. Robbins, 348 U.S. 819 (1954).

999 (1950); *Mulligan* v. *Andrews*, 93 U.S. App. D.C. 375, 211 F.2d 28 (1954). Appellee's reply was also lengthy and detailed: though he complained of the vagueness of the charges, he clearly understood them and at great length endeavored to rebut them. *Cf. Williams* v. *Cravens*, *supra* note 1.

For these reasons we conclude that the District Court erred in granting appellee's motion for summary judgment, and the judgment entered must be reversed. The Government urges that the cause be remanded with instructions to grant the Government's cross-motion for summary judgment. That motion raises issues not connected with the matter of specificity, which we think should first be considered by the District Court. The judgment entered will be reversed, and the case remanded for further proceedings not inconsistent with this opinion.

So ordered.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13500

A. LINCOLN GREEN, *Appellant*

v.

J. STANLEY BAUGHMAN, President, Federal National Mortgage Association, et al., *Appellees*

Appeal from the United States District Court for the District of Columbia

---

Decided January 31, 1957

Mr. A. Lincoln Green, appellant, *pro se*.

Mr. William P. Arnold, Attorney, Department of Justice, with whom Assistant Attorney General *George Cochran Doub*, *Mr. Oliver Gasch*, United States Attorney, and *Mr. Paul A. Sweeney*, Attorney, Department of Justice, were on the brief, for appellees.

Before PRETTYMAN, BAZELON and WASHINGTON, Circuit Judges.

PRETTYMAN, *Circuit Judge*: This controversy is here for the third time. Upon the first appeal we held[1] that Green had not exhausted his administrative remedies. Upon the second appeal we held[2] that the charges upon which the dismissal rested were sufficiently specific. The

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[1] Green v. Baughman, 94 U.S. App. D.C. 291, 214 F.2d 878 (1954).

[2] Baughman v. Green, 97 U.S. App. D.C. 150, 229 F.2d 33 (1956).

present appeal is from a summary judgment granted appellees Baughman, *et al.*, by the District Court.

Green was an attorney with the Federal National Mortgage Association, a corporate agency of the United States. He was a veteran preference eligible. In July, 1952, he was served with a statement of charges and a notice of proposed discharge. He replied at length. The charges were sustained by the head of the agency, and Green's discharge was ordered. He appealed to the Civil Service Commission. A hearing was held there, and the discharge was sustained by the hearing officer. Appeal was taken to the Board of Appeals and Review, and that tribunal affirmed. More of the facts need not now be stated, in view of the statements in our opinions upon the prior appeals.

Green filed a civil action seeking declaratory judgment that his dismissal was illegal, as in violation of the Veterans' Preference Act[3] and the regulations of the Civil Service Commission, and for an order directing restoration to his position as of the date of his discharge.

Green makes twelve points. His first point is that his discharge by Baughman, President of the Association, was without authority and therefore null. But the record shows that the discharge was approved and directed by the Chairman of the Board of the Association after "careful consideration" and as an "independant conclusion". Green admits this latter official had the authority.

The second point is that the decision in the letter of notification stated no reasons, simply saying "that the charges are sustained". The statute provides[4] that no preference eligible shall be discharged except for reasons given in writing. The charges were stated in writing and

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[3] 58 STAT. 387 (1944), as amended, 5 U.S.C.A. § 851 *et seq.*

[4] 58 STAT. 390 (1944), as amended, 5 U.S.C.A. § 863.

with sufficient specificity. They were sustained, and Green was so notified in writing. We think direct reference to the charges as sustained was a sufficient statement of the reasons for the discharge.

The third point is that Green was entitled to a decision, not a mere recommendation, by Baughman. This point appears to be at variance with the first point, *supra;* but, however that may be, the record shows that Baughman made a recommendation, based upon long and detailed findings, to the Chairman of the Board, who had the authority to order discharge and who approved Baughman's recommendation, as we have said. This agency was a corporate entity. Its bylaws (Article 14) provided that the Chairman of the Board "may select, employ * * * such * * * employees * * * as shall be necessary for the transaction of the business of the Association". Thus he was the administrative officer in respect to employment. The decision to which Green was entitled under the Civil Service Manual (the statute is silent on the subject) was a decision by the Chairman. He received such a decision. Green relies upon our decision in *Kutcher* v. *Gray*,[5] but in that case there was no decision by the responsible official upon the crucial point there at issue.

Green's fourth point is that Baughman considered oral and written statements which he (Green) was given no opportunity to answer. Green was given the charges, which we have held to have been sufficiently specific.[6] He replied at length. Upon his appeal to the Civil Service Commission he was given a hearing, at which he appeared. Testimony was taken. The record shows that all the information secured during the investigation and all memoranda and correspondence in connection with the case were placed in the Commission's appeal file and made

[5] 91 U.S. App. D.C. 266, 199 F. 2d 783 (1952).

[6] *Supra* note 2.

available for inspection by all parties. The statutes require only that charges and reasons be given an employee proposed for discharge.[7] We think Green has no basis for the complaint advanced on this point.

The fifth point is that the dismissal was arbitrary, unreasonable and capricious. We have examined the record with some care and find no ground for that assertion.

The sixth, seventh and eighth points are that Baughman was biased, prejudiced, interested, and motivated by bad faith. We find no basis in the record for these assertions.

The ninth point is that the frequent performance of acts not *per se* criminal or immoral, openly in an office for twenty months, while under supervision and observation, establishes as a matter of law that the alleged acts were not offenses. The thrust of this point is that repeated offenses, accompanied by forebearance on the part of superior officers, or fear on the part of subordinates, or distaste on the part of either or both for disciplinary measures, affords immunity to the perpetrator. The fallacy of the position is evident in its statement.

Point ten is that the stenographers who filed statements against Green were subjected to coercion, duress, and undue influence. We find no evidence to that effect.

Point eleven is that the Chief Law Officer of the Civil Service Commission failed to decide the issue of the bias and interest of Baughman. The Chief Law Officer specifically found no support for Green's allegations that his superiors were ignorant of the law, lacked ethics, and were incompetent, and that Officer specifically found that the personnel action of the Association was not arbitrary, unreasonable or capricious. Moreover, as we have pointed out, Baughman was not the ultimate authority in the

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[7] Lloyd-La Follette Act, 37 Stat. 539 (1912), as amended, 5 U.S.C.A. § 652(a); Veterans' Preference Act, *supra* note 4.

Association, and no charge of bias against the Chairman was made.

The twelfth and final point is that the Chief Law Officer of the Commission abused his discretion in failing to ask Government employees to appear at the hearing. We passed on this matter in *Deving* v. *Campbell*.[8]

We have commented upon all of appellant's points merely because of his persistent affirmations of arbitrary and capricious actions on the part of the officials dealing with his case and because some of the points suggest procedural infirmities. It is settled beyond peradventure of doubt that courts will not examine into the merits of the discharges of employees in the executive branch of the Government.[9] All procedural requirements were fully met in the present case. The record contains long findings of fact by Baughman (seventeen printed pages) when he recommended the discharge and by the Chief Law Officer of the Civil Service Commission (twenty-three printed pages) when he made his recommendation upon the appeal. Green insists his discharge was arbitrary and capricious. The charges against him, and the evidence, fall into two main parts: (1) that he was unbearably

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[8] 90 U.S. App. D.C. 171, 174, 194 F.2d 876, 879 (1952), *cert. denied*, 344 U.S. 826, 97 L. Ed. 643, 73 S. Ct. 27 (1952).

[9] Eberlein v. United States, 257 U.S. 82, 66 L. Ed. 140, 42 S. Ct. 12 (1921); Keim v. United States, 177 U.S. 290, 44 L. Ed. 774, 20 S. Ct. 574 (1900); Keyton v. Anderson, 97 U.S. App. D.C. 178, 229 F.2d 519 (D.C. Cir. 1956); Benenati v. Young, 95 U.S. App. D.C. 120, 220 F.2d 383 (D.C. Cir. 1955); Williams v. Cravens, 93 U.S. App. D.C. 380, 210 F.2d 874 (D.C. Cir. 1954), *cert. denied* 348 U.S. 819, 99 L. Ed. 646, 75 S. Ct. 30 (1954); Blackmon v. Lee, 92 U.S. App. D.C. 268, 205 F.2d 13 (D.C. Cir. 1953); Powell v. Brannan, 91 U.S. App. D.C. 16, 196 F.2d 871 (D.C. Cir. 1952); Carter v. Forrestal, 85 U.S. App. D.C. 53, 175 F.2d 364 (D.C. Cir. 1949), *cert. denied*, 338 U.S. 832, 94 L. Ed. 507, 70 S. Ct. 47 (1949); Levy v. Woods, 84 U.S. App. D.C. 138, 171 F.2d 145 (D.C. Cir. 1948).

discourteous to and inconsiderate of subordinates and co-workers, yelling and using toward stenographers such expressions as "You come over here and you come fast" and "God damn it to hell, why can't you do things right" and toward co-workers such terms as "ignoramus" and "imbecile"; and (2) that he used Government office, property and personnel in notable quantities for personal business and affairs, causing delay and postponement of official work. When such charges are sustained, surely no more potent reasons for discharge for the good of the Government service can be assigned. It is essential to the good of such service that employees devote Government time to Government service and that superiors at all levels operate with a decent regard to at least the rudiments of accepted manners toward subordinates.

Affirmed.

Sec. 14, Veterans Preference Act as amended, 5 U.S.C., sec. 863:

> No permanent or indefinite preference eligible, who has completed a probationary or trial period employed in the civil service, or in any establishment, agency, bureau, administration, project, or department, hereinbefore referred to shall be discharged, suspended for more than thirty days, furloughed without pay, reduced in rank or compensation, or debarred for future appointment except for such cause as will promote the efficiency of the service and for reasons given in writing, and the person whose discharge, suspension for more than thirty days, furlough without pay, or reduction in rank or compensation is sought shall have at least thirty days' advance written notice (except where there is reasonable cause to believe the employee to be guilty of a crime for which a sentence of imprisonment can be imposed), stating

any and all reasons, specifically and in detail, for any such proposed action; such preference eligible shall be allowed a reasonable time for answering the same personally and in writing, and for furnishing affidavits in support of such answer, and shall have the right to appeal to the Civil Service Commission from an adverse decision of the administrative officer so acting, such appeal to be made in writing within a reasonable length of time after the date of receipt of notice of such adverse decision: Provided, That such preference eligible shall have the right to make a personal appearance, or an appearance through a designated representative, in accordance with such reasonable rules and regulations as may be issued by the Civil Service Commission; after investigation and consideration of the evidence submitted, the Civil Service Commission shall submit its findings and recommendations to the proper administrative officer and shall send copies of the same to the appellant or to his designated representative, and it shall be mandatory for such administrative officer to take such corrective action as the Commission finally recommends . . .

Lloyd-LaFollette Act, 5 U.S.C., sec. 652(a):

No person in the classified service of the United States shall be removed or suspended without pay therefrom except for such cause as will promote the efficiency of such service and for reasons given in writing. Any person whose removal or suspension without pay is sought shall (1) have notice of the same and of any charges preferred against him; (2) be furnished with a copy of such charges; (3) be allowed a reasonable time for filing a written answer to such charges with affidavits; and (4) be furnished at the earliest practicable date with a written decision on such answer. No examination of witnesses nor any

trial or hearing shall be required except in the discretion of the officer or employee directing the removal or suspension without pay. Copies of the charges, the notice of hearing, the answer, the reasons for removal or suspension without pay, and the order of removal or suspension without pay shall be made a part of the records of the proper department or agency, as shall also the reasons for reduction in grade or compensation; and copies of the same shall be furnished, upon request, to the person affected and to the Civil Service Commission."

Regulations of the Civil Service Commission:

5 CFR, sec. 9102 (1), as amended in 15 Fed. Reg. 3075:

No employee, veteran or nonveteran, shall be separated, suspended, or demoted except for such cause as will promote the efficiency of the service and for reasons given in writing. The agency shall notify the employee in writing of the action proposed to be taken. This notice shall set forth, specifically and in detail, the charges preferred against him. The employee shall be allowed a reasonable time for filing a written answer to such charges and furnishing affidavits in support of his answer. He shall not, however, be entitled to an examination of witnesses, nor shall any trial or hearing be required except in the discretion of the agency. If the employee answers the charges, his answer must be considered by the agency. Following consideration of the answer, the employee shall be furnished at the earliest practical date with a written decision. If the agency determines that removal or other action is warranted, the employee shall be notified in the decision of the reasons for the action taken and its effective date. Copies of the charges, notice of hearing (if any), answer, reasons for removal, or other action, shall be made

a part of the records of the department or agency concerned."

5 CFR, sec. 22.3, as amended in 18 Fed. Reg. 8227:

Notification of adverse decision of administrative officers of agencies.

Adverse decision by administrative officers following notification of proposed adverse action, charges and opportunity for answer shall be in writing, dated, and submitted to the employee promptly after such decisions have been made. The employee shall also be advised in the same notification, of his right to appeal to the appropriate office of the Civil Service Commission, as provided in Sec. 22.4.

S1-28, Federal Personnel Manual of the Civil Service Commission (extract):

A decision adverse to the employee must be based only on the reasons given in the notice which he had an opportunity to answer. No other reasons are valid as a basis for the adverse decision.

FILED
JUL 31 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1957

No. 192

A. LINCOLN GREEN, *Petitioner*,

v.

J. STANLEY BAUGHMAN, President, Federal National Mortgage Association, et al., *Respondents*.

PETITIONER'S REPLY TO THE RESPONDENTS' BRIEF

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IN THE

Supreme Court of the United States

October Term, 1957

No. 192

A. LINCOLN GREEN, *Petitioner,*

v.

J. STANLEY BAUGHMAN, President, Federal National Mortgage Association, et al., *Respondents.*

PETITIONER'S REPLY TO THE RESPONDENTS' BRIEF

Respondents assert that "the Government has at no time defended the suit upon the basis that the wrong defendant was named." (Resps. Br. 7). A contention that the Chairman made the decision is a contention that the wrong defendant has been named. Based upon this contention the court below substituted the Chairman and affirmed a judgment on the merits. Thus the court, in finding against petitioner, gave as a reason that "no charge of bias against the Chairman was made." (Pet. 8a). This reason applies to the entire complaint. No claim of any kind was made against the Chairman. When the court selects and

substitutes defendants, it has decided the issues against the plaintiff. Were it not for this contention, resting on a few words conveniently obtained, petitioner would be entitled to judgment because of the admitted lack of authority of respondent, Baughman.

Petitioner was not misled by the signature to the decision-letter nor did he erroneously sue Baughman. Respondents on the first appeal in the court below, No. 12717, said in their brief:

> 3. Equally without substance is appellee's allegation in the fourth count of the complaint that the decision of dismissal, although signed by Baughman, was not made by him. In view of the fact that both the statement of charges and the letter of dismissal were signed by Baughman, and the dismissal affirmed in its procedural as well as its substantive aspects by the Chief Law Officer and the Board of Appeals and Review of the Civil Service Commission, and the Commissioners themselves, such a contention is obviously frivolous. (p. 30)
>
> The matter was considered by the Chairman of the Board of FNMA and, with his concurrence, J. Stanley Baughman, the President, formally found that the charges were sustained. (p. 8)
>
> Before this appeal was heard by the Commission, however, appellee sued for reinstatement in the United States District Court for the District of Columbia, alleging, *inter alia*, that the statement of charges against him was not sufficiently specific to meet statutory requirements, and that Baughman, the administrative officer who made the decision dismissing appellee, was biased and prejudiced against him. (p. 2)

Respondents assert that "the fact that both Baughman and Foley approved petitioner's dismissal does not detract from its validity, but rather emphasizes that his case received careful review." (Resps' Br. 7). Two heads may make for a more careful review and undoubtedly respondents may be able to offer other innovations and improve-

ments on the statute. But the statute concentrates the function and responsibility in one person and respondent, Baughman, was named in the charges to be that person. Respondents claim a discretion to partition the function and diffuse the responsibility.

These contentions serve but to expose the indefensibility of the procedures approved in the court below to sustain petitioner's dismissal.

Respectfully submitted,

A. Lincoln Green,
Petitioner pro se.

No. 492

In the Supreme Court of the United States

OCTOBER TERM, 1957

A. LINCOLN GREEN, PETITIONER

v.

STANLEY BAUGHMAN, PRESIDENT, FEDERAL NATIONAL MORTGAGE ASSOCIATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

J. LEE RANKIN,
Solicitor General,

GEORGE COCHRAN DOUB,
Assistant Attorney General,

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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 192

A. LINCOLN GREEN, PETITIONER

v.

J. STANLEY BAUGHMAN, PRESIDENT, FEDERAL NATIONAL MORTGAGE ASSOCIATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The district court wrote no opinion with respect to its final order granting summary judgment in favor of respondents. Its earlier opinions granting summary judgment in favor of petitioner (R. 9) and dismissing petitioner's original complaint are not officially reported.

The opinion of the court of appeals affirming the district court's award of summary judgment to respondent (Pet. 4a-9a) is reported at 243 F. 2d 610. The

opinion of the court of appeals sustaining the sufficiency of the charges against petitioner (Pet. 1a-3a) is reported at 229 F. 2d 33, and its opinion affirming the dismissal of petitioner's original complaint for failure to exhaust his administrative remedy is reported at 214 F. 2d 878.

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia Circuit affirming the district court's award of summary judgment to respondents was entered January 31, 1957. Petitioner's timely petition for a rehearing *en banc* was denied by the court of appeals on March 25, 1957. The petition for a writ of certiorari was filed June 13, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

QUESTION PRESENTED

Whether petitioner's removal from his federal employment was accomplished with full observance of his rights under Section 14 of the Veterans' Preference Act.

STATUTE AND REGULATIONS INVOLVED

The pertinent statute and regulations involved are set out in Appendix A, *infra*, pp. 12-13.

STATEMENT

Prior to September 19, 1952, petitioner was employed as an attorney, Grade GS-13, with the Federal National Mortgage Association (FNMA), a corporate agency of the United States (R. 9). On July 14, 1952, he was served with a statement of charges (R. 39) which constituted notice of his proposed discharge in accordance with Section 14 of the Veterans' Preference Act, 5 U.S.C. 863. These charges, signed by respondent

Baughman, President of FNMA, accused petitioner of improper conduct toward office personnel (Charge I), improper use of Government office and property (Charge II), improper use of Government personnel (Charge III), improper absences from office (Charge IV), and refusal to respect authority of superiors (Charge V) (R. 39-44).[1] Each charge specified the period during which this alleged misconduct took place and each listed a substantial number of examples.

By letter of July 23, 1952, petitioner requested from Baughman a more specific statement of charges, and demanded that Baughman disqualify himself from judging the matter (R. 45-62). Baughman replied that the charges were sufficiently specific, and refused to disqualify himself (R. 62-63).

Thereupon petitioner on September 9, 1952, filed a fifty-nine page affidavit of reply with attached exhibits, in which he attempted to answer the charges against him, denying, or admitting and explaining, them (R. 63-141). His answer was given careful consideration (R. 142), but on September 19, 1952, he was notified that "the charges are sustained" and his employment with FNMA terminated as of that date (R. 142-143).

On September 29, 1952, petitioner filed timely notice of appeal with the Chief Law Officer of the Civil Service Commission, alleging defects in the charges, and asserting that the charges were not serious enough to warrant dismissal (R. 144-152). Before this appeal was heard by the Commission, however, petitioner sued for reinstatement in the United States District Court for the District of Columbia, alleging, *inter alia*, that

[1] For the convenience of the Court, the charges are set out verbatim in Appendix B, *infra*, pp. 14-19.

the statement of charges against him was not sufficiently specific to meet statutory requirements, and that Baughman, the administrative officer who made the decision dismissing petitioner, was biased and prejudiced against him. The district court, Holtzoff, J., on May 4, 1953, granted the Government's motion to dismiss on the ground that petitioner had failed to state a cause of action. The court held that at least Charge Ia was sufficiently specific and that one good charge is enough to justify severance from the service. It held further that the allegation of bias and prejudice was insufficient as a matter of law. Upon appeal the Court of Appeals for the District of Columbia Circuit affirmed the decision below, but on the ground that petitioner had failed to exhaust his administrative remedy. *Green v. Baughman*, 214 F. 2d 878.

In the meantime, after an independent investigation of the evidence in support of the charges had been conducted by Civil Service personnel, a hearing on petitioner's administrative appeal had been held by the Civil Service Commission on March 4, 1953 (R. 28), and on June 5, 1953, the Chief Law Officer of the Commission filed his decision affirming the dismissal (R. 161-184). This decision discussed in detail the charges against petitioner and the evidence submitted in connection with them, and concluded (R. 183): "Under all of the facts and circumstances of the case, it is found that the discharge of Mr. Green was for such cause as will promote the efficiency of the service, and that the personnel action of the Federal National Mortgage Association was not arbitrary, unreasonable or capricious." Petitioner immediately appealed to the Commission's Board of Appeals and Review (R. 186),

which on February 3, 1954, sustained his discharge (R. 195-196). The Board held that Charges Ia, Ib, II, and III "are procedurally valid and that the removal action was justified and was for such cause as will promote the efficiency of the service within the meaning of Section 14 of the Veterans' Preference Act of 1944, as amended, on the basis of these charges." The Board found, however, that Charges IV and V "are defective due to lack of specificity required by Section 14 of the Act and the Commission's regulation."

Petitioner's attempt to obtain reconsideration of this final decision (R. 196) was denied by the Commission on July 29, 1954 (R. 270-272), and on August 12, 1954, he again brought suit in the district court (R. 1), seeking a declaratory judgment that his dismissal was in violation of the Veterans' Preference Act and applicable regulations, and an order directing his reinstatement.

In the ten counts of his complaint (R. 1-6), petitioner alleged numerous defects in the proceedings which resulted in his discharge, including, *inter alia*, that the statement of charges against him was not sufficiently specific to meet statutory requirements (R. 2-3). On cross-motions for summary judgment (R. 7-8), the district court, McLaughlin, J., denied the Government's motion and awarded summary judgment to petitioner (R. 9-14) on the ground that none of the charges against him met the requirements of Section 14 of the Veterans' Preference Act that reasons for discharge must be stated "specifically and in detail." 5 U.S.C. 863.

On appeal, the Court of Appeals reversed on January 12, 1956, holding that "Charges 1(a), 1(b), 2 and 3,

on which the Commission relied, appear to us to give the appellee sufficient information of the charges against him to afford him a 'fair chance to defend himself.'" (Pet. 2a). The court remanded the case to the district court for consideration there of the other matters raised in petitioner's complaint, and, after additional proceedings, that court granted summary judgment to the respondents. Petitioner appealed to the Court of Appeals, which in an extensive opinion (Pet. 4a-9a) examined *seriatim* each of petitioner's allegations, and rejected all of them, concluding that all procedural requirements were met in effecting petitioner's dismissal.

ARGUMENT

The extensive proceedings below have established that petitioner's removal from the federal service was accomplished in full compliance with applicable statutes and regulations. The action of the agency in discharging petitioner has been reviewed on the merits by the Civil Service Commission, and all of the legal issues involved have been resolved against him in the course of three hearings by the Court of Appeals. The decisions of the appellate court rest upon well-settled rules, and, contrary to petitioner's contentions, in no way conflict with holdings of the Court of Claims. Petitioner raises no issues warranting review of his dismissal by this Court.

1. Petitioner's primary contention (Points I, II, III, VI and VII, Pet. 24-27, 32-33) is that although the letter dismissing him was signed by defendant Baughman, the President of Federal National Mortgage Association, the actual decision to remove petitioner was made by Foley, the Chairman of FNMA's Board of Directors.

Petitioner argues (Point I, Pet. 24) that, misled by this fact, he erroneously sued Baughman instead of Foley, and that, because he named the wrong defendant, the decisions below are invalid. The Government has at no time defended the suit on the basis that the wrong defendant was named, and petitioner obviously cannot object to the holding below on that ground.

Moreover, Foley, as Chairman of FNMA's Board, clearly was an appropriate official to dismiss petitioner, since under the corporation's by-laws he was the "administrative officer" with respect to employment. (Pet. 6a). Accordingly, the letter of dismissal signed by Baughman, the President, expressly states that after "careful consideration by me *and by the Chairman of the Board,* I am *authorized* to notify you * * * that the charges are sustained * * *." [Emphasis added.] (R. 142). The fact that both Baughman and Foley approved petitioner's dismissal does not detract from its validity, but rather emphasizes that his case received careful review.

2. Petitioner alleges deficiencies in both the Statement of Charges against him and the Letter of Dismissal (Points IV, V, Pet. 27-32); these contentions, however, were carefully considered and properly rejected by the Court of Appeals. In its January, 1956, opinion (Pet. 1a) the court found that the Statement of Charges gave petitioner sufficient notice of the charges against him to afford him a fair chance to defend himself. Pointing out that the charges were lengthy and detailed; though he complained of the "are adequately identified as to time, place and persons," the court noted that petitioner's reply "was also lengthy and detailed; though he complained of the vagueness of the charges, he clearly understood them

and at great length endeavored to rebut them" (Pet. 2a-3a). This decision merely applied the statutory standard, as interpreted by both the Court of Appeals and the Court of Claims, to the circumstances of this case. See, *e.g.*, *Williams* v. *Cravens*, 210 F. 2d 874 (C.A.D.C.), certiorari denied, *sub nom. Williams* v. *Robbins*, 348 U.S. 819; *Deak* v. *Pace*, 183 F. 2d 997 (C.A.D.C.); *Blackmar* v. *United States*, 128 C. Cls. 693.

Likewise, the Court of Appeals in its latest opinion was clearly correct in holding that the letter of dismissal, advising petitioner that "the charges are sustained," sufficiently informed him of the reasons for his removal. The court stated (Pet. 5a-6a):

> The statute [Section 14 of the Veterans' Preference Act, 5 U.S.C. 863] provides that no preference eligible shall be discharged except for reasons given in writing. The charges were stated in writing and with sufficient specificity. They were sustained, and Green was so notified in writing. We think direct reference to the charges as sustained was a sufficient statement of the reasons for the discharge.

See also *Blackmon* v. *Lee*, 205 F. 2d 13, 14 (C.A.D.C.).[2]

[2] The letter of dismissal in this case did more than meet the test established in *Mulligan* v. *Andrews*, 211 F. 2d 28 (C.A.D.C.), where the employee had been advised only that "Careful consideration has been given to your reply, together with the facts developed during the investigation, and the conclusion has been reached that the evidence is such as to show your unsuitability for continuance in the Internal Revenue Service." 211 F. 2d at 30. The court condemned this notice as failing "to disclose which of the charges contained in the notice of proposed adverse action were relied upon for removal; or, indeed, whether removal rested upon any of the charges." In the instant case, the letter of dismissal refers specifically to the statement of charges served on petitioner, and advises

3. Finally, there is no basis for petitioner's claim (Point VIII, Pet. 33) that the Court of Appeals refused to consider his contentions that the action by the administrative agency was arbitrary and capricious, thereby conflicting with decisions of the Court of Claims. The opinion expressly states (Pet. 7a): "We have examined the record with some care and find no ground for that assertion." Similarly, the court held with reference to the claims that Baughman was biased, prejudiced, interested and motivated by bad faith (Pet. 7a): "We find no basis in the record for these assertions." And, after reaffirming its findings that all procedural requirements were met in effecting petitioner's dismissal, the decision concludes with these words (Pet. 8a-9a):

> * * * Green insists his discharge was arbitrary and capricious. The charges against him, and the

---

him that "the charges are sustained * * *." This language establishes the specific reasons for petitioner's removal, identifying as it does the charges against him and explicitly informing him that they have been upheld.

Nor is this decision in conflict with the Court of Claims' holding in *Blackmar* v. *United States*, 128 C. Cls. 693. That case involved the validity, not of a letter of dismissal, but of findings of the Civil Service Commission in the course of an administrative appeal. The Court of Claims held that the Commission, in reversing the determination of its regional examiner that major portions of the charges against the employee were insufficiently specific, erred in holding merely that "the charges against Mr. Blackmar are sustained." The court concluded from the record that as a result of this blanket determination, Blackmar's discharge "was based, in part, on charges which did not meet the statutory requirement of specificity." 128 C. Cls. at 706-707. The court recognized, however, that it was only because of the peculiar facts there involved, *i.e.*, a reversal of the hearing examiner's decision, that a simple conclusion sustaining the charges was insufficient; the opinion expressly states "* * * that where the decision of the regional office is merely affirmed on appeal additional findings are unnecessary." *Ibid.*

evidence, fall into two main parts: (1) that he was unbearably discourteous to and inconsiderate of subordinates and co-workers, yelling and using toward stenographers such expressions as "You come over here and you come fast" and "God damn it to hell, why can't you do things right" and toward co-workers such terms as "ignoramus" and "imbecile"; and (2) that he used Government office, property and personnel in notable quantities for personal business and affairs, causing delay and postponement of official work.[2] When such charges are sustained, surely no more potent reasons for discharge for the good of the Government service can be assigned. It is essential to the good of such service that employees devote Government time to Government service and that superiors at all levels operate with a decent regard to at least the rudiments of accepted manners toward subordinates.[3]

[2] Petitioner's unsupported allegations of arbitrary action and bias are equally without merit under the decisions of the Court of Claims upon which he relies. The Court of Claims has made clear that charges of bad faith must be more than mere conjecture, and particularly that a contention of an employee that his superiors desired to be rid of him, even if true, is no basis for reversal of his dismissal. *Elchbegoff v. United States*, 123 C. Cls. 709, 712-713; cf. *Knotts v. United States*, 128 C. Cls. 489.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.
GEORGE COCHRAN DOUB,
Assistant Attorney General.
PAUL A. SWEENEY,
ROBERT S. GREEN,
Attorneys.

JULY, 1957.

APPENDIX A

Statute and Regulations Involved

Section 14 of the Veterans Preference Act of 1944, as amended (5 U.S.C. 863) provides in pertinent part as follows:

> § 863. Discharge, suspension, etc., only for cause; reason in writing; advance notice; personal appearance; findings and recommendations.
>
> No permanent or indefinite preference eligible * * * shall be discharged, suspended for more than thirty days, furloughed without pay, reduced in rank or compensation, or debarred for future appointment except for such cause as will promote the efficiency of the service and for reasons given in writing, and the person whose discharge, suspension for more than thirty days, furlough without pay, or reduction in rank or compensation is sought shall have at least thirty days' advance written notice (except where there is reasonable cause to believe the employee to be guilty of a crime for which a sentence of imprisonment can be imposed), stating any and all reasons, specifically and in detail, for any such proposed action; such preference eligible shall be allowed a reasonable time for answering the same personally and in writing, and for furnishing affidavits in support of such answer, and shall have the right to appeal to the Civil Service Commission from an adverse decision of the administrative officer so acting, such appeal to be made in writing within a reasonable length of time after the date of receipt of notice of such adverse decision: * * *

Applicable Civil Service Regulations, set out in 5 C. F. R. § 22, provide in pertinent part:

> § 22.2 *Notification of proposed actions; charges and opportunity for answer—(a) Advance written notice of thirty days.*—No employee covered by the regulations in this part shall be discharged, suspended for more than 30 days, furloughed without pay, reduced in rank or compensation, or debarred for future appointment except for such cause as will promote the efficiency of the service and for reasons given in writing, and the employee whose discharge, suspension for more than 30 days, furlough without pay, or reduction in rank or compensation is sought, shall have at least 30 days' advance written notice stating any and all reasons, specifically and in detail, for any such proposed action. * * *
>
> * * * * * *
>
> § 22.3 [as amended, 18 F.R. 8227] *Notification of adverse decisions of administrative officers of agencies.*—Adverse decisions by administrative officers following notification of proposed adverse action, charges and opportunity for answer shall be in writing, dated, and submitted to the employee promptly after such decisions have been made. The employee shall also be advised, in the same notification, of his right to appeal, to the appropriate office of the Civil Service Commission, as provided in § 22.4.

APPENDIX B

FEDERAL NATIONAL MORTGAGE ASSOCIATION

HOUSING AND HOME FINANCE AGENCY
811 VERMONT AVENUE NW., WASHINGTON 25, D. C.

July 14, 1952.

MR. A. LINCOLN GREEN,
Federal National Mortgage Association,
Room 857, Lafayette Building,
811 Vermont Avenue, NW., Washington, D. C.

Subject: Statement of Charges

DEAR MR. GREEN: Charges of improper conduct, as described below specifically and in detail, in the course of your employment by Federal National Mortgage Association, a corporation wholly owned by the Federal Government, are hereby preferred against you. In accordance with established policy and Civil Service Regulations you will be given an opportunity to answer these charges personally and in writing and to furnish affidavits in support of your answer. Your answer and affidavits, if any, will be given full consideration in determining whether the proposed action indicated below shall be taken.

Charge I. Improper Conduct Toward Office Personnel

(a) That during the period between November 1950 and February 1951, you were at times rude and discourteous and used severe language to the stenographer who was assigned to assist you; and on one occasion you flew into a rage because she failed to bring her notebook when you called her, although her desk was only ten feet from yours, and used abusive language to the extent that she was made to cry and, as a

result thereof, she complained to the General Counsel and threatened to resign unless given another assignment. Subsequently she was given another assignment. At that time you were told of the complaint made by the stenographer, and you were warned by the General Counsel that such conduct toward office personnel would not be tolerated and must not be repeated. You stated there would be no repetition of such conduct.

(b) That during the period between February 1951, and June 1952, your attitude toward the second stenographer assigned to assist you was on numerous occasions distasteful and unpleasant, insulting, rude, harsh, and abrupt, notwithstanding your having previously been warned as to such conduct. You frequently lost your temper, and on two occasions became so enraged that you threw a small telephone book toward her and hit her desk. You threw papers to the floor at one time when the lawyer sharing your office asked the stenographer to do some work for him. On various occasions you knocked on your desk without calling your stenographer and said "Take this!" or "Do this!" On other occasions you said to her "You come over here and you come fast!" Once you yelled at her and said if she didn't like the way things were done in your office she knew what she could do. On another occasion you swore at her when she passed on to you a telephone number that had been given to her erroneously by saying "God damn it to hell, why can't you do things right?"

That as a result of your conduct the stenographer became so upset and disturbed she was made to cry on various occasions; and finally in June 1952 this second stenographer also threatened to resign her Government position unless given another assignment, which was done in order to retain her services.

That you have been critical and arrogant toward

your co-workers in that when they have in good faith disagreed with you on some point of law, you have called them "ignoramus" or "imbecile".

Charge VI. Improper Use of Government Office and Property

(a) That during the period between November 1950 and February 1951, you were assigned Government office space, including miscellaneous office supplies and equipment, and the services of a Government stenographer to carry on and perform your official duties for the Association.

During that period you improperly used the office and its miscellaneous supplies and equipment by requiring the stenographer to type your personal letters, or letters other than official letters, on Government typewriters, and to use Government stationery and other supplies and equipment.

(b) That during the period between February 1951 and June 1952, you were assigned Government office space, including miscellaneous office supplies and equipment, and the services of a Government stenographer to carry on and perform your official duties for the Association. That beginning in the summer or fall of 1951 and extending for a period of over six months and ending in the spring of 1952, a house was being constructed for your personal account.

During the foregoing periods and particularly while the house was in process of construction and immediately prior thereto, you improperly used the office and its miscellaneous equipment, including telephones, typewriters, file folders, stationery, filing cabinets, and other supplies and equipment by making and receiving numerous telephone calls concerning your personal business; and by requiring your stenographer to type personal letters for you, to keep personal books and

records for you, and to make personal telephone calls for you.

Charge III: Improper Use of Government Personnel

(a) That during the period between November 1950 and February 1951, you improperly used the services of the Government stenographer who was assigned to assist you by requiring her to write personal letters for you and to sort various personal invoices, bills, and other papers, all during official Government working hours.

(b) That during the period between February 1951 and June 1952, and particularly while the house was under construction and immediately prior thereto, and during official hours of business, you improperly used the services of the Government stenographer who was assigned to assist you, in the following respects:

1. You required her to make numerous telephone calls concerning your personal business to supply houses and stores selling building materials and supplies; and to your architect and to contractors.

2. You required her to write letters and address envelopes to contractors and supply houses concerning bids, estimates, prices, and other matters, all relating to your personal business.

3. You required her to set up and maintain personal correspondence files for you, and files for bids and estimates.

4. You required her to prepare personal checks and maintain personal check book and records for you.

5. You required her on numerous occasions to leave the Government office and building where she was employed to take care of personal business for you, including errands to put coins in the parking meters where your personal car was parked on the street.

That the improper use of the stenographer, as set out above, particularly during the time the house was under construction, required her to devote practically three-fourths of her time to your personal work, leaving only approximately one-fourth of her time available for her Government duties; that during such period you frequently interrupted this stenographer while she was performing official work for another lawyer who shared your office space, and required her to attend to your personal business and to delay completion of such official work, and such official work was frequently delayed and postponed as a consequence thereof.

Charge IV. Improper Absences From Office

That during the period of six or more months while your house was under construction, you frequently absented yourself from your office during official working hours at least two or more hours at various times daily, without permission and without leaving word of where you were going. You failed to submit the required leave slips for such absences, nor did you account for or explain the reasons for such absences.

Charge V. Refusal to Respect Authority of Superiors

That during the period between April 1951 and April 1952, you were frequently resentful of the authority of your immediate superiors to the point of insubordination. Almost consistently you adopted an argumentative attitude when your superiors expressed any disagreement with the conclusion you reached on any matters and plainly showed and expressed resentment to any suggestion for change or further research. On one occasion, involving preparation of a legal instrument, you were unwilling to make a change suggested by your superior, an Assistant General Counsel, and he was

forced to order you to make such change. On another occasion you had been requested by an Assistant General Counsel to write a letter which subsequently did not meet with the approval of the Assistant General Counsel. When he suggested a change, you informed him that if he did not like the way you had prepared the letter he could change it himself or get someone else to do so.

* * * * *

You are advised that this letter constitutes notice of proposed adverse action, in accordance with Section 14 of the Veterans' Preference Act of 1944; and that the proposed adverse action is discharge, and that the proposed effective date thereof is August 15, 1952, at the close of business on that day.

During the notice period mentioned above, you are being retained in an active duty status.

You will be given a period of time terminating at the close of business on July 31, 1952, to answer the foregoing charges personally and in writing and to furnish affidavits in support of your answer. Such answer and affidavits, if any, should be submitted in triplicate to J. S. Baughman, President, Federal National Mortgage Association, 811 Vermont Avenue N.W., Washington 25, D. C. Failure by you to answer within the time allowed will result in the charges being considered sustained.

Very truly yours,

(S.) J. S. BAUGHMAN,
President.